



EXAMINING POST-APARTHEID ANTI-FRONTING MEASURES TO PROMOTE BLACK SOUTH AFRICAN INCLUSION IN THE CORPORATE SECTOR

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ABSTRACT

During the colonial and apartheid eras, oppressive, discriminatory policies and laws systematically excluded the majority of black South Africans from participating in economic activities, enforcing racial segregation and socioeconomic marginalization. Since the advent of democracy in 1994, South Africa has implemented progressive legislation and policies to integrate black citizens into the economic mainstream, fostering active participation across various sectors. Despite these efforts, some white-owned corporations employ fronting practices—deliberate misrepresentations to bypass anti-fronting laws—thereby undermining the inclusion of black individuals in meaningful corporate roles. This study examines post-apartheid anti-fronting interventions designed to promote the integration of black South Africans into the corporate sector. Utilizing a literature review methodology, the research analyzes primary and secondary sources, including legal documents and scholarly works, related to equality, Black Economic Empowerment (BEE), and fronting. The analysis highlights how colonial and apartheid regimes used legal mechanisms to entrench economic exclusion, while post-1994 transformative laws aim to rectify these injustices. However, persistent fronting practices continue to hinder effective implementation. The government has responded by strengthening civil and criminal accountability measures and leveraging judicial processes to penalize offenders, ensuring compliance with anti-fronting regulations. The findings reveal that, despite amendments to the Broad-Based Black Economic Empowerment (B-BBEE) Act, fronting remains a significant challenge. The paper recommends proactive anti-fronting strategies to enhance the mainstreaming of black South Africans, emphasizing robust enforcement and oversight to achieve equitable economic

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participation. These measures are critical to dismantling systemic barriers and advancing socioeconomic equity in South Africa's corporate landscape.

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1. INTRODUCTION

South Africa's economic history is deeply scarred by centuries of systemic marginalization, exploitation, and exclusion of black citizens, orchestrated through colonial and apartheid governance structures that entrenched racial inequities. These regimes enforced policies and laws that deliberately restricted black South Africans' access to economic opportunities, land ownership, and quality education, perpetuating a cycle of poverty and disempowerment (Morifi & Mahlatsi, 2021). The colonial and apartheid systems prioritized the economic dominance of the white minority, creating stark disparities in wealth and income distribution. While white communities enjoyed affluence, the black majority was confined to systemic poverty, with limited access to resources and opportunities (Ally & Lissoni, 2017). This historical backdrop sets the stage for understanding the post-1994 democratic government's efforts to redress these injustices through transformative socioeconomic policies aimed at fostering inclusivity and equity.

Colonial and apartheid policies were instrumental in institutionalizing economic exclusion. Land dispossession was a cornerstone of this oppression, with laws such as the Native Land Act of 1913 prohibiting black South Africans from owning or purchasing land in areas designated for white ownership, which constituted the majority of fertile and mineral-rich territories (Strauss, 2019). These restrictions relegated black communities to marginalized regions, often unsuitable for agriculture or industrial activities, severely limiting their economic prospects. Black South Africans were further exploited as a source of cheap labor, employed in low-wage, menial roles to support the economic interests of the white elite (Morifi & Mahlatsi, 2021). This labor system was designed to maintain economic dependency, ensuring that black workers remained subservient and unable to accumulate wealth or assets.

Education under apartheid was another tool of exclusion, deliberately structured to limit black South Africans' socioeconomic mobility. The Bantu Education system provided substandard schooling, designed to prepare black individuals for low-skill labor rather than professional or leadership roles (Gallo, 2020). This inferior education system restricted access to quality jobs and higher education, reserving skilled professions and academic opportunities for white citizens. The intersection of racial and gender oppression exacerbated these disparities, with black women facing compounded discrimination in education and employment, further entrenching their marginalization (Gallo, 2020). These policies created a socioeconomic framework that systematically disadvantaged black South Africans, resulting in profound and enduring inequalities.

The economic consequences of apartheid were catastrophic, particularly between 1970 and 1994, when South Africa faced sluggish growth, rising unemployment, and declining investment (Ally & Lissoni, 2017). Poverty and inequality deepened, compounded by a lack of skills development and a high cost of living, disproportionately affecting black communities. The mismanaged economy inherited by the post-apartheid government in 1994 was characterized by structural inefficiencies

and racial inequities, posing significant challenges to reconstruction and development (Polus et al., 2020). Despite the transition to democracy, global institutions like the World Bank and the International Monetary Fund (2020) have noted that South Africa remains the most unequal country in the world, with race as a primary determinant of wealth distribution, where the white minority controls over 80% of the nation's wealth.

The advent of democracy in 1994, led by the African National Congress (ANC), marked a turning point in South Africa's pursuit of socioeconomic justice. The establishment of a constitutional democracy under black majority leadership achieved significant political equality, a critical milestone in dismantling apartheid's legacy. However, political power alone could not address the deep-seated economic disparities inherited from centuries of exclusion. The ANC government recognized that economic empowerment was essential to improve the social conditions of black South Africans and reduce systemic poverty (Shezi, 2021). This realization prompted the introduction of a series of progressive policies and legislative interventions aimed at fostering economic inclusion and redressing historical injustices.

Among the earliest post-apartheid initiatives were the *Ready to Govern* policy and the Reconstruction and Development Programme (RDP), launched to address social ills, alleviate poverty, and promote socioeconomic emancipation. These policies laid the groundwork for subsequent interventions, including the Growth, Employment, and Redistribution (GEAR) strategy in 1996, which focused on macroeconomic stability and job creation (Gelb, 2006). The Accelerated and Shared Growth Initiative for South Africa (AsgiSA) in 2006 aimed to accelerate economic growth and reduce unemployment, while the New Growth Path (NGP) in 2010 prioritized job creation and inclusive development. The National Development Plan (NDP) of 2012 provided a long-term vision for sustainable growth and poverty eradication, emphasizing the need for equitable economic participation (Gelb, 2006). These policies collectively sought to deliver social and economic goods, enhance service delivery, and empower marginalized communities.

A cornerstone of South Africa's economic transformation agenda is the Black Economic Empowerment (BEE) framework, formalized through the Broad-Based Black Economic Empowerment (B-BBEE) Strategy Document of 2003. This strategy was designed to address the persistent exclusion of black South Africans from meaningful economic participation by promoting ownership, control, and management of businesses (Department of Trade, Industry, and Competition, 2020). The B-BBEE framework encompasses three core components: direct empowerment through ownership and control of enterprises and assets; human resource development to achieve workplace equity; and indirect empowerment through preferential procurement and enterprise development. According to the Department of Trade, Industry, and Competition, the B-BBEE strategy is a state-led initiative to drive economic transformation, ensuring equal participation in economic activities and addressing racial income disparities (Department of Trade, Industry, and Competition, 2020).

The guiding principles of the B-BBEE framework emphasize a broad-based approach to mitigate social and political instability arising from racial inequities. Inclusivity is a central tenet, advocating for an economy that benefits all South Africans regardless of background. Effective governance ensures transparency and accountability in implementing economic reforms, while integration with broader growth strategies aligns B-BBEE with national development goals (Gelb, 2006). These principles aim to create a fairer, more equitable economic system that redresses historical imbalances and fosters social cohesion.

Despite these progressive interventions, the implementation of B-BBEE has faced significant challenges, notably the practice of fronting. Fronting involves deliberate misrepresentation by companies, often white-owned, to appear compliant with B-BBEE requirements without genuinely empowering black individuals (du Plessis & BProc, 2022). For instance, companies may appoint black employees to nominal leadership roles without granting them actual authority or economic benefits, undermining the objectives of economic empowerment. The Department of Trade, Industry, and Competition (2020) defines fronting as a deliberate circumvention of the B-BBEE Act, often through falsified compliance claims or superficial inclusion of black individuals. This practice not only perpetuates economic exclusion but also erodes trust in transformative policies.

Fronting poses a significant barrier to achieving substantive equality and inclusive economic participation for black South Africans. It reflects a resistance to genuine transformation, as some corporations exploit loopholes to maintain economic dominance (Matotoka & Odeku, 2022). The persistence of fronting underscores the need for robust anti-fronting measures, including legislative amendments and stricter enforcement mechanisms. The B-BBEE Amendment Act of 2013 introduced provisions to criminalize fronting and enhance oversight, yet challenges remain in curbing these practices effectively (Department of Trade, Industry, and Competition, 2020).

South Africa's struggle with economic inequality is not isolated but resonates with global discussions on systemic inequities, as highlighted by frameworks like the United Nations' Sustainable Development Goals (SDGs), which prioritize reducing inequalities (United Nations, 2020). The country's efforts to mainstream black South Africans into the corporate sector through B-BBEE align with these global objectives, emphasizing the importance of equitable access to economic opportunities. However, the ongoing prevalence of fronting practices highlights the complexity of dismantling entrenched economic structures and the need for sustained policy innovation.

This paper aims to analyze the post-apartheid anti-fronting interventions that facilitate the integration of black South Africans into the corporate sector. By employing a literature review methodology, it examines primary and secondary sources, including the Constitution, B-BBEE legislation, case law, and scholarly works, to assess the effectiveness of these interventions. The analysis traces the historical roots

of economic exclusion, evaluates the transformative potential of B-BBEE, and identifies the challenges posed by fronting. It also explores the government's efforts to enforce accountability through legal and judicial mechanisms, proposing proactive strategies to strengthen anti-fronting measures and advance economic equity.

2. METHODOLOGY

This study employs a literature review methodology to investigate post-apartheid anti-fronting interventions fostering black South Africans' integration into the corporate sector. Primary and secondary legal sources, including the South African Constitution, statutes, case law, and policy documents, were systematically collected and analyzed to address the research objectives (Department of Trade, Industry, and Competition, 2020). The Broad-Based Black Economic Empowerment (B-BBEE) Act, its amendments, and relevant judicial decisions were central to the analysis, given their focus on economic inclusion. Secondary sources, such as journal articles, books, theses, and credible online publications, were also reviewed to provide scholarly perspectives on B-BBEE policy impacts and fronting challenges (du Plessis & BProc, 2022). The methodology emphasizes the B-BBEE framework's role in promoting equitable economic participation, examining how fronting undermines these efforts. By synthesizing legal texts and academic literature, the study evaluates the effectiveness of anti-fronting measures and identifies gaps in implementation. This approach ensures a comprehensive understanding of the legal and socio-economic dimensions of black economic empowerment in South Africa.

3. THE BLACK ECONOMIC EMPOWERMENT COMMISSION 2001

In 1998, the Black Economic Empowerment (BEE) Commission was established following a proposal by the Black Economic Forum, representing eleven prominent black business organizations. Its primary purpose was to address the systemic economic exclusion of black South Africans inherited from colonial and apartheid regimes. The commission was tasked with several key objectives: conducting a comprehensive study of BEE processes from 1990 onward, identifying barriers to meaningful economic participation by black individuals, proposing a robust national BEE strategy, and establishing benchmarks for monitoring its implementation (Modise & Mtshiselwa, 2013). These goals aimed to dismantle the entrenched socioeconomic disparities perpetuated by historical oppression and foster inclusive economic growth.

To fulfill its mandate, the BEE Commission undertook extensive research, engaging in consultations with diverse stakeholders, including government bodies, private sector representatives, and civil society groups. This collaborative approach ensured a thorough understanding of the challenges facing black economic empowerment. The commission's findings highlighted the profound underdevelopment of black communities, resulting from decades of discriminatory policies that restricted access to resources, education, and opportunities (Modise & Mtshiselwa, 2013). Its seminal report proposed an Integrated National BEE Strategy, advocating for a

coordinated, streamlined framework to promote economic inclusion. This strategy emphasized clear objectives, defined roles, and responsibilities for the public, private, and civil society sectors to achieve transformative economic reform.

The BEE Commission's report was a pivotal milestone, underscoring the need for proactive state intervention to drive black empowerment. It recommended the enactment of legislation to formalize BEE processes, set measurable targets, and establish accountability mechanisms. This led to the promulgation of the Broad-Based Black Economic Empowerment (B-BBEE) Act, which provided a legal framework for economic transformation (Modise & Mtshiselwa, 2013). The commission also criticized the apartheid government's failure to provide institutional or financial support for black economic advancement, noting its racially discriminatory policies. To address these gaps, the report proposed the creation of regulatory bodies, such as a procurement agency and the National Empowerment Funding Agency (NEFA), to centralize and streamline BEE initiatives. These institutions were envisioned as critical tools for financing empowerment projects and ensuring policy coherence.

The commission's recommendations reshaped South Africa's approach to economic equity, emphasizing the state's role in correcting historical imbalances. By advocating for a harmonized and modernized BEE strategy, the commission laid the foundation for policies that prioritize ownership, skills development, and equitable participation in the economy. Its work remains a cornerstone of post-apartheid efforts to integrate black South Africans into the economic mainstream, addressing the enduring legacy of systemic exclusion (Modise & Mtshiselwa, 2013).

4. THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT 53 OF 2003

To address the entrenched socioeconomic disparities created by apartheid policies that favored white business owners, the post-apartheid South African government introduced the Broad-Based Black Economic Empowerment (B-BBEE) Act 53 of 2003. This legislation was designed to transform the economy to reflect the country's racial demographics, promoting equitable participation of black South Africans in economic activities (Lahiff et al., 2007). The Act aimed to advance constitutional principles of equality, enhance black economic engagement, stimulate higher economic growth, increase employment opportunities, and ensure a more balanced distribution of income. It also sought to establish a cohesive national policy to foster economic unity and equal access to government services, empowering historically disadvantaged groups (Amoah, 2023).

The B-BBEE Act defines "black people" as Africans, Coloureds, and Indians, with a particular focus on uplifting women, youth, workers, people with disabilities, and rural communities previously marginalized due to racial policies. The legislation promotes empowerment through multiple avenues: increasing black representation in management and ownership roles, supporting community initiatives, developing skills and human capital, achieving workplace equity, and encouraging preferential procurement from black-owned enterprises (Amoah, 2023). By fostering ownership and

control of businesses and assets, the Act aims to create sustainable economic opportunities for black South Africans, addressing the legacy of systemic exclusion.

The Act grants the Minister of Trade and Industry authority to issue codes of good practice, transformation charters, and directives to guide B-BBEE implementation. It also established an advisory council to provide strategic guidance on empowerment initiatives, ensuring alignment with national transformation goals (Lahiff et al., 2007). These mechanisms were intended to create a structured framework for monitoring compliance and promoting accountability across public and private sectors. The B-BBEE Act's comprehensive approach seeks to dismantle the economic barriers erected by apartheid, fostering a more inclusive and representative economy.

Despite its transformative intent, the B-BBEE Act has encountered significant challenges, particularly the practice of fronting, where businesses misrepresent their compliance with empowerment requirements to gain benefits such as government tenders. Some companies, often white-owned, appoint black individuals—such as administrative staff or low-level employees—as nominal directors or shareholders without granting them genuine authority or economic benefits (Van de Rhee, 2020). This deceptive practice undermines the Act's objectives, perpetuating economic exclusion while superficially appearing compliant. The Department of Trade, Industry, and Competition (2022) reported over 380 fronting cases, highlighting the strain on the Act's effectiveness and the need for stronger enforcement mechanisms.

In response to fronting, the government introduced the Broad-Based Black Economic Empowerment Amendment Act 46 of 2013, which strengthened anti-fronting provisions by criminalizing such practices and enhancing oversight. However, fronting persists, as perpetrators exploit loopholes to circumvent the law (Department of Trade, Industry, and Competition, 2022). The lack of comprehensive data on fronting incidents complicates efforts to assess its full extent, with many cases identified through judicial proceedings rather than systematic reporting. This underscores the need for improved monitoring and data collection to track compliance and violations effectively.

The persistence of fronting reflects broader challenges in achieving substantive economic transformation. While the B-BBEE Act has facilitated some progress in black economic participation, its implementation is hampered by resistance from certain businesses and inadequate enforcement (Van de Rhee, 2020). Nevertheless, the government's commitment to anti-fronting interventions signals a determination to uphold the Act's transformative goals. These efforts align with South Africa's constitutional mandate to promote equality and redress historical injustices, ensuring that black South Africans gain meaningful access to economic opportunities.

The B-BBEE Act remains a critical tool for mainstreaming black South Africans into the corporate sector, but its success depends on addressing fronting and other compliance issues. By strengthening legal frameworks, enhancing oversight, and promoting genuine empowerment, the government can advance the Act's objectives, fostering a more equitable and inclusive economy (Amoah, 2023). The ongoing

challenge of fronting underscores the complexity of economic transformation in a post-apartheid context, requiring sustained policy innovation and stakeholder collaboration to achieve lasting change.

5. TRANSFORMATIVE CONSTITUTIONALISM, RIGHTS, AND EQUITY

The adoption of South Africa's Constitution in 1996 marked a monumental step toward dismantling the systemic racial discrimination entrenched by the apartheid regime. Central to this transformative framework is Section 9, which enshrines the right to equality, aiming to rectify historical socioeconomic disparities and promote substantive equity (Albertyn & Goldblatt, 1998). This section explores how transformative constitutionalism, rooted in the equality clause, serves as a mechanism to address past injustices and foster socioeconomic transformation, particularly for black South Africans. By prioritizing substantive over formal equality, the Constitution seeks to create a society where historical disadvantages are redressed, ensuring equitable access to opportunities and resources (Rapatsa, 2015).

Apartheid's legacy left South Africa with profound socioeconomic inequalities, characterized by racial and gender-based exclusion. The apartheid system systematically denied black South Africans access to quality education, property ownership, and economic opportunities, reserving these privileges for the white minority (Brink v Kitshoff NO, 1996). Laws such as the Native Land Act of 1913 and the Native Trust and Land Act of 1936 restricted black land ownership to just 8% of South Africa's territory, relegating black communities to economically marginal areas (Modise & Mtshiselwa, 2013). These policies, coupled with the Bantu Education system, ensured that black individuals were confined to low-skill labor roles, perpetuating poverty and dependency (Gallo, 2020). The enduring impact of these injustices necessitated a constitutional framework that not only prohibits discrimination but actively redresses historical imbalances.

Section 9 of the Constitution articulates the right to equality before the law, prohibiting unfair discrimination on grounds including race, gender, and socioeconomic status. Unlike formal equality, which advocates for uniform treatment regardless of context, substantive equality acknowledges historical disparities and requires differential treatment to achieve equity (De Waal, 2002). This approach, integral to transformative constitutionalism, recognizes that past disadvantages such as inherited poverty among black communities require targeted interventions to level the playing field (Albertyn & Goldblatt, 1998). The Constitutional Court has consistently interpreted Section 9 through the lens of substantive equality, as seen in *President of the Republic of South Africa v Hugo* (1997), where the court emphasized that equality must account for contextual factors to achieve meaningful transformation.

Transformative constitutionalism, as a guiding principle, seeks to reshape South Africa's social and economic landscape by addressing the structural inequalities inherited from apartheid. It aligns with the Constitution's broader objectives of promoting human dignity, freedom, and equality, as outlined in the Bill of Rights

(Rapatsa, 2015). The equality clause was deliberately crafted with South Africa's history in mind, drawing on international human rights principles, such as those in the Universal Declaration of Human Rights (United Nations, 1948), to ensure a robust framework for redress. By prioritizing substantive equality, the Constitution enables policies like the Broad-Based Black Economic Empowerment (B-BBEE) Act, which aim to integrate black South Africans into the economic mainstream through affirmative action (Albertyn, 2007).

Substantive equality requires acknowledging the differential impact of historical policies on various groups. For instance, black South Africans inherited systemic poverty, while white communities benefited from wealth accumulated during apartheid (Mushariwa, 2011). This disparity justifies measures that prioritize black individuals, particularly black women, who faced compounded discrimination under apartheid (Ebrahim, 2018). The Constitutional Court has upheld such measures, provided they align with Section 9(2), which permits restitutionary actions to promote equality without constituting unfair discrimination (*Minister of Finance v Van Heerden*, 2004). This ruling underscores that transformative policies, even if they differentiate based on race, are constitutionally valid if they address historical disadvantages and advance equity.

The *National Coalition for Gay and Lesbian Equality v Minister of Justice* (1998) further illustrates the court's commitment to substantive equality. The court noted that past discrimination often has lingering effects, requiring proactive measures to prevent the perpetuation of inequality. In South Africa, where apartheid's scars remain visible, mere elimination of discriminatory laws is insufficient; affirmative action and redistributive policies are essential to achieve true equality (Albertyn, 2007). This perspective aligns with global human rights discourses, such as the United Nations' Sustainable Development Goals, which emphasize reducing inequalities through targeted interventions (United Nations, 2023).

The B-BBEE Act exemplifies substantive equality by promoting black economic participation through ownership, management, and preferential procurement. However, practices like fronting where companies falsely claim compliance to secure benefits undermine these efforts (Department of Trade, Industry, and Competition, 2022). Fronting perpetuates the socioeconomic exclusion of black South Africans, delaying the transformative goals of the Constitution. The Constitutional Court's jurisprudence, as seen in *Qwelane v South African Human Rights Commission* (2021), reinforces the need to protect vulnerable groups through constitutional values, emphasizing that equality must translate into tangible socioeconomic improvements.

Critics of substantive equality argue that it may unfairly burden current generations who did not directly participate in apartheid. Some contend that beneficiaries of affirmative action, such as black South Africans, may not have personally experienced past discrimination, while those disadvantaged by these policies, such as white individuals, did not directly benefit from apartheid's privileges (Mushariwa, 2011).

This perspective views affirmative action as reverse discrimination, potentially violating fairness principles. However, proponents counter that systemic inequalities persist due to inherited wealth among white communities and inherited poverty among black ones, necessitating corrective measures (Ebrahim, 2018). The Constitutional Court has addressed this tension, affirming that substantive equality is context-specific, shaped by South Africa's unique historical and socio-political circumstances (Albertyn, 2007).

The historical context of apartheid's discriminatory laws, such as the Bantu Authorities Act of 1951, illustrates the scale of redress required. These laws created racially segregated "homelands," stripping black South Africans of citizenship and economic agency (Ally & Lissoni, 2017). The Abolition of Racially Based Land Measures Act of 1991 repealed these statutes but failed to address the economic consequences of land dispossession, leaving black communities in poverty (Modise & Mtshiselwa, 2013). Substantive equality, as embodied in the B-BBEE Act and the Employment Equity Act of 1998, seeks to correct these imbalances by prioritizing historically disadvantaged groups in resource allocation and economic opportunities (Burger & Jafta, 2010).

The Constitutional Court's approach to equality adjudication involves a nuanced analysis of historical and social factors. In *Minister of Finance v Van Heerden* (2004), the court outlined that equality claims must consider the complainant's societal position, historical vulnerabilities, and the purpose of the challenged measure. This framework ensures that policies like B-BBEE are evaluated for their transformative impact rather than superficial fairness. The court's emphasis on context allows it to uphold measures that differentiate based on race, provided they advance constitutional values and do not perpetuate harm (De Waal, 2002).

South Africa's commitment to substantive equality aligns with international human rights principles, such as those articulated in the International Covenant on Civil and Political Rights (United Nations, 1966). These principles recognize that equality requires proactive measures to address systemic disadvantages, particularly for marginalized groups. The B-BBEE Act's affirmative action components, such as preferential procurement and black business ownership, reflect this global ethos, aiming to integrate black South Africans into the corporate sector (Amoah, 2023). However, the persistence of fronting highlights the need for stronger enforcement mechanisms to ensure that these measures achieve their intended outcomes.

The debate surrounding substantive equality also touches on issues of dignity and social cohesion. Critics argue that affirmative action may stigmatize beneficiaries, suggesting they are selected based on race rather than merit (Mushariwa, 2011). However, proponents assert that such measures restore dignity by addressing systemic barriers that have historically undermined black South Africans' agency (Ebrahim, 2018). The Constitutional Court has navigated this debate by emphasizing that transformative measures must balance individual rights with collective redress,

ensuring that policies like B-BBEE promote both equity and social unity (Albertyn & Goldblatt, 1998).

The intersectionality of discrimination—where race, gender, and socioeconomic status compound disadvantage—further underscores the importance of substantive equality. Black women, for instance, faced triple marginalization under apartheid, with limited access to education, employment, and property (Gallo, 2020). The B-BBEE Act’s focus on empowering women and other vulnerable groups aligns with Section 9’s mandate to address these intersecting inequalities (Van de Rheede, 2020). By prioritizing those most affected by historical injustices, the Constitution and its implementing legislation aim to create a more inclusive society.

The Constitutional Court’s role in interpreting Section 9 has been pivotal in shaping South Africa’s transformative agenda. Cases like *Brink v Kitshoff NO* (1996) highlight the pervasive impact of apartheid laws, which restricted black South Africans’ access to property, education, and civic amenities. The court noted that these restrictions created enduring socioeconomic disparities, requiring affirmative action to achieve equality (Burger & Jafta, 2010). This judicial approach ensures that transformative constitutionalism is not merely aspirational but a practical framework for socioeconomic change.

In conclusion, transformative constitutionalism, as embodied in Section 9, provides a robust foundation for addressing South Africa’s historical inequalities. By prioritizing substantive equality, the Constitution enables policies like B-BBEE to redress past injustices and promote economic inclusion. However, challenges such as fronting underscore the need for vigilant enforcement and policy refinement. The Constitutional Court’s jurisprudence, rooted in contextual analysis, continues to guide South Africa’s transformation, ensuring that equality is not delayed but actively pursued (Albertyn, 2007). This commitment to equity reflects South Africa’s broader human rights aspirations, contributing to global efforts to combat systemic inequality.

6. JUSTIFYING ANTI-FRONTING PRACTICES IN SOUTH AFRICA

The Broad-Based Black Economic Empowerment (B-BBEE) Act has been a cornerstone of South Africa’s efforts to redress the socioeconomic imbalances created by apartheid, but its implementation has faced significant challenges, notably fronting. Fronting occurs when businesses misrepresent their compliance with B-BBEE requirements to secure benefits like government tenders, undermining the Act’s transformative objectives (Pooe, 2013). This section critically examines the rationale for anti-fronting measures by analyzing the arguments supporting and opposing B-BBEE, highlighting their implications for economic equity and social transformation in South Africa.

6.1. Arguments in Favor of B-BBEE

Proponents of B-BBEE argue that the legislation is essential for correcting the deep-seated inequalities inherited from apartheid, which systematically excluded black

South Africans from economic opportunities (Pike et al., 2018). The Act's primary goal is to foster a more equitable society by enabling black individuals to participate meaningfully in the economy through ownership, management, and skills development. This aligns with the transformative constitutionalism enshrined in South Africa's Constitution, which prioritizes substantive equality to address historical disadvantages (Reuben & Bobat, 2014). By promoting black economic empowerment, B-BBEE seeks to create a sense of shared national identity, fostering social cohesion in a country marked by racial divisions.

The B-BBEE framework is designed to benefit not only black individuals but also the broader economy. It encourages social investment and community empowerment, ensuring that economic growth is inclusive and sustainable (Esser & Dekker, 2008). For instance, the Act's emphasis on preferential procurement supports black-owned businesses, which are critical drivers of economic development. Small and medium enterprises (SMEs), in particular, play a vital role in job creation and economic diversification, and B-BBEE provides a platform for these businesses to thrive (Cant & Wiid, 2013). By integrating previously disadvantaged groups into the economic mainstream, the Act contributes to reducing poverty and inequality, aligning with global development goals such as the United Nations' Sustainable Development Goals (United Nations, 2023).

Supporters also argue that B-BBEE is a moral and practical necessity. The apartheid system created structural barriers that continue to disadvantage black South Africans, and without targeted interventions, these disparities would persist indefinitely (Pike et al., 2018). The Act's focus on substantive equality ensures that resources and opportunities are distributed in a way that addresses historical inequities, promoting fairness and justice. By empowering black individuals to compete on an equal footing, B-BBEE fosters a more dynamic and inclusive economy, benefiting all South Africans (Reuben & Bobat, 2014). This perspective underscores the importance of anti-fronting measures, as fronting undermines the genuine empowerment that B-BBEE seeks to achieve.

6.2. Arguments Against B-BBEE

Despite its transformative intent, B-BBEE has faced significant criticism, with detractors arguing that it is an imperfect solution to South Africa's complex socioeconomic challenges. Some scholars contend that the Act has negligible or even negative impacts on economic performance, failing to boost firm investment, labor productivity, or profitability (Acemoglu et al., 2007). Critics argue that B-BBEE's compliance requirements impose high costs on businesses, reducing their competitiveness and straining economic resources (Kleynhans & Kruger, 2014). These structural costs can lead to inefficiencies, ultimately affecting the quality and availability of goods and services in the market.

Another critique is that B-BBEE fosters corruption and cronyism, particularly in the allocation of government tenders. The emphasis on affirmative procurement has

been linked to tender fraud, where companies exploit B-BBEE requirements to secure contracts without delivering quality services (Le Roux, 2022). This undermines public trust in the Act and exacerbates economic inefficiencies. Some argue that B-BBEE creates a small class of wealthy black elites often politically connected individuals rather than fostering broad-based empowerment (Mbeki, 2009). This concentration of benefits among a select few contradicts the Act's goal of inclusive economic transformation.

Critics also highlight the stigmatization of B-BBEE beneficiaries, who may be perceived as less qualified or selected solely based on race rather than merit (Gillis et al., 2001). This perception can erode self-esteem and create workplace tensions, particularly in environments resistant to transformation. Furthermore, the Act's affirmative action components are seen by some as reverse discrimination, unfairly disadvantaging white individuals or other groups who are not beneficiaries (Skedsvold, 1996). This argument posits that B-BBEE's focus on race-based criteria may compromise meritocracy, leading to inefficiencies and resentment among those excluded from its benefits.

The broader economic implications of B-BBEE are also contentious. Critics argue that the Act's requirements deter foreign investment, as companies face additional regulatory burdens and compliance costs (Kleynhans & Kruger, 2014). This can hinder economic growth, particularly in a country already grappling with high unemployment and sluggish development. Additionally, the Act's emphasis on black empowerment is seen by some as perpetuating racial divisions rather than fostering a unified national identity, countering its intended goal of social cohesion (Le Roux, 2022).

6.3. The Role of Anti-Fronting Measures

The debate over B-BBEE underscores the necessity of anti-fronting measures to ensure the Act's integrity and effectiveness. Fronting, where companies falsely claim B-BBEE compliance to gain economic advantages, directly undermines the Act's transformative goals (Department of Trade, Industry, and Competition, 2022). By appointing black individuals to nominal roles without granting them genuine authority or benefits, businesses perpetuate the economic exclusion that B-BBEE seeks to address. Anti-fronting measures, such as those introduced in the B-BBEE Amendment Act of 2013, aim to deter such practices through criminal penalties and enhanced oversight (Van de Rhee, 2020).

These measures are justified by the need to protect the Act's transformative potential. Without robust enforcement, fronting allows companies to exploit B-BBEE for profit while maintaining the status quo of economic inequality (Pooe, 2013). The Constitutional Court's emphasis on substantive equality supports this approach, as fronting violates the principle of equitable redress enshrined in Section 9 (Albertyn, 2007). By holding perpetrators accountable, anti-fronting measures reinforce the Act's alignment with South Africa's constitutional mandate to promote socioeconomic justice.

Moreover, anti-fronting measures address the criticisms of B-BBEE by ensuring that empowerment benefits reach their intended recipients. By curbing corruption and cronyism, these measures enhance public trust in the Act and promote genuine economic inclusion (Esser & Dekker, 2008). They also mitigate the stigmatization of beneficiaries by ensuring that black individuals in leadership roles are empowered with real authority, countering perceptions of tokenism (Cant & Wiid, 2013). In this way, anti-fronting measures strengthen the Act's legitimacy and effectiveness, aligning it with broader goals of economic transformation and social equity.

In conclusion, the arguments for and against B-BBEE highlight the complexity of economic transformation in post-apartheid South Africa. While proponents view the Act as a vital tool for redressing historical injustices, critics argue that it imposes economic costs and fosters inefficiencies. Anti-fronting measures are critical to addressing these challenges, ensuring that B-BBEE achieves its transformative objectives (Pike et al., 2018). By combating misrepresentation and promoting genuine empowerment, these measures uphold the principles of substantive equality and contribute to a more inclusive economy, reflecting South Africa's commitment to socioeconomic justice (Reuben & Bobat, 2014).

7. ADDRESSING THE CONTRADICTIONS OF WHETHER B-BBEE AMOUNTS TO DISCRIMINATION

The Broad-Based Black Economic Empowerment (B-BBEE) Act, a cornerstone of South Africa's post-apartheid economic transformation, has sparked debate over whether its affirmative action measures constitute discrimination. Critics argue that B-BBEE's race-based policies unfairly disadvantage non-black groups, while proponents assert that they are essential for redressing historical inequalities (Kleynhans & Kruger, 2014). This section examines these contradictions, assessing whether B-BBEE aligns with South Africa's constitutional commitment to equality or perpetuates a form of reverse discrimination.

A primary critique of B-BBEE is that it discriminates against white South Africans and other non-beneficiary groups by prioritizing black individuals in economic opportunities, such as employment, ownership, and procurement. Critics contend that this approach violates the principle of fairness, as it penalizes individuals who did not personally contribute to apartheid's injustices (Skedsvold, 1996). For instance, young white South Africans, born after 1994, may face reduced job prospects due to B-BBEE's affirmative action requirements, despite having no direct connection to historical oppression. This perspective views B-BBEE as reverse racism, arguing that it undermines meritocracy and creates new forms of inequality (Kleynhans & Kruger, 2014). Such criticisms highlight the tension between corrective justice and individual fairness, raising questions about whether B-BBEE's race-based criteria align with the Constitution's equality clause.

However, proponents of B-BBEE argue that these measures are not discriminatory but rather restorative, addressing the systemic disadvantages imposed on black South

Africans during apartheid. The apartheid regime's policies, such as the Native Land Act of 1913 and Bantu Education, entrenched racial inequalities that continue to shape socioeconomic disparities (Modise & Mtshiselwa, 2013). Black communities inherited poverty, limited access to education, and restricted economic participation, while white communities benefited from accumulated wealth and privilege. B-BBEE's affirmative action is thus justified as a means of achieving substantive equality, as enshrined in Section 9 of the Constitution, which permits measures to redress past disadvantages (Albertyn, 2007). The Constitutional Court has upheld this view, notably in *Minister of Finance v Van Heerden* (2004), ruling that restitutionary measures are constitutional if they promote equality without unfairly harming others.

The concept of substantive equality is central to resolving this debate. Unlike formal equality, which advocates uniform treatment, substantive equality recognizes that historical inequalities require differential treatment to achieve fairness (De Waal, 2002). B-BBEE's race-based policies are designed to counteract the lingering effects of apartheid, ensuring that black South Africans gain access to economic opportunities previously denied to them. This approach aligns with the transformative constitutionalism framework, which seeks to restructure South African society by addressing structural inequalities (Rapatsa, 2015). By fostering black ownership, management, and skills development, B-BBEE aims to dismantle the economic barriers perpetuated by apartheid, promoting a more inclusive economy.

The Constitutional Court's jurisprudence provides further clarity on this issue. In *South African Police Service v Solidarity obo Barnard* (2014), the court acknowledged that affirmative action may cause temporary disadvantages for non-beneficiaries but emphasized that such measures are not discriminatory if they advance constitutional goals. The court stressed that B-BBEE's benefits must be balanced against its impact on non-black groups, ensuring that it does not perpetuate harm or entrench new inequalities (Albertyn, 2007). This nuanced approach underscores that B-BBEE is a corrective tool, not a mechanism for racial exclusion, aimed at achieving long-term socioeconomic equity.

Critics, however, argue that B-BBEE's implementation often lacks transparency and fairness, leading to perceptions of discrimination. Practices like fronting, where companies falsely claim compliance to secure benefits, exacerbate these concerns by undermining the Act's credibility (Department of Trade, Industry, and Competition, 2022). Such practices reinforce the view that B-BBEE benefits a select few, often politically connected individuals, rather than the broader black population (Mbeki, 2009). Addressing these implementation challenges through robust anti-fronting measures is essential to ensuring that B-BBEE fulfills its transformative mandate without being perceived as discriminatory.

In conclusion, the debate over whether B-BBEE constitutes discrimination reflects the complexity of balancing historical redress with contemporary fairness. While critics view its race-based measures as reverse discrimination, proponents argue that they are

necessary for substantive equality, supported by constitutional principles and judicial precedent (Rapatsa, 2015). B-BBEE's alignment with transformative constitutionalism underscores its role in addressing apartheid's legacy, but effective implementation and anti-fronting measures are critical to mitigating perceptions of unfairness (Kleynhans & Kruger, 2014). By promoting genuine empowerment, B-BBEE can advance South Africa's commitment to an equitable society without perpetuating new forms of discrimination.

8. STRATEGIES FOR EFFECTIVE IMPLEMENTATION OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT

The Broad-Based Black Economic Empowerment (B-BBEE) Act represents a critical effort to redress the socioeconomic inequalities entrenched by apartheid, yet its success hinges on overcoming implementation challenges, particularly the pervasive issue of fronting. Fronting, where companies misrepresent their compliance with B-BBEE requirements to gain economic advantages, undermines the Act's transformative objectives (Department of Trade, Industry, and Competition, 2022). This section outlines practical strategies to strengthen the B-BBEE framework, focusing on robust enforcement, stakeholder collaboration, and public awareness to ensure genuine economic empowerment for black South Africans.

A fundamental strategy for achieving B-BBEE's goals is the rigorous enforcement of anti-fronting measures. The B-BBEE Amendment Act of 2013 introduced criminal penalties for fronting, but enforcement remains inconsistent due to limited resources and detection challenges (Van de Rhee, 2020). To address this, the government should establish dedicated task forces within the Department of Trade, Industry, and Competition to investigate and prosecute fronting cases. These task forces could leverage advanced auditing techniques, such as data analytics, to identify discrepancies in B-BBEE compliance reports. Regular, unannounced inspections of companies claiming high B-BBEE scores would further deter misrepresentation (Pooe, 2013). Strengthening the B-BBEE Commission's capacity to handle complaints and impose sanctions is also essential, ensuring that violations are met with swift and proportionate consequences.

Enhancing judicial processes is another critical step. Courts play a pivotal role in upholding B-BBEE's integrity by adjudicating fronting cases and setting legal precedents. However, delays in the judicial system can weaken deterrence (Amoah, 2023). To address this, specialized commercial courts could be established to expedite B-BBEE-related cases, ensuring timely resolution and reinforcing accountability. Training judges and magistrates on the nuances of B-BBEE legislation and fronting practices would improve the quality of rulings, aligning judicial outcomes with the Act's transformative goals (Pike et al., 2018). The Constitutional Court's emphasis on substantive equality, as seen in *Minister of Finance v Van Heerden* (2004), provides a legal foundation for upholding anti-fronting measures, ensuring they align with constitutional principles.

Stakeholder collaboration is vital for B-BBEE's success. The government must work closely with the private sector, civil society, and black business organizations to foster a shared commitment to empowerment. Public-private partnerships can facilitate skills development programs, particularly in rural and underserved communities, addressing the skills gap that hinders black economic participation (Cant & Wiid, 2013). Industry-specific transformation charters, co-developed by businesses and government, can set realistic empowerment targets while accounting for sector-specific challenges. Engaging black-owned SMEs through mentorship and funding initiatives would further integrate them into supply chains, amplifying B-BBEE's economic impact (Esser & Dekker, 2008). These collaborative efforts ensure that empowerment is not merely a regulatory obligation but a collective mission to build an inclusive economy.

Public awareness campaigns are essential to combat fronting and promote B-BBEE's objectives. Many businesses and individuals lack a clear understanding of the Act's requirements, leading to unintentional non-compliance or exploitation by unscrupulous entities (Reuben & Bobat, 2014). The government should launch nationwide campaigns, utilizing media platforms, workshops, and community outreach to educate stakeholders about B-BBEE's purpose and compliance standards. These campaigns should highlight the consequences of fronting, including legal and reputational risks, to deter violations. Empowering black employees and communities to report suspected fronting through anonymous whistleblowing channels would enhance detection efforts (Pooe, 2013). By fostering transparency, these initiatives build public trust in B-BBEE and encourage genuine participation.

Addressing socioeconomic barriers is also crucial for B-BBEE's effectiveness. Apartheid's legacy of unequal education and resource distribution continues to limit black South Africans' ability to capitalize on empowerment opportunities (Modise & Mtshiselwa, 2013). The government should invest in education and training programs tailored to B-BBEE's focus areas, such as management and entrepreneurship, to equip black individuals with the skills needed for corporate leadership. Access to affordable financing for black-owned businesses, through institutions like the National Empowerment Funding Agency (NEFA), would enable sustainable growth and ownership (Amoah, 2023). These measures address the structural constraints that perpetuate inequality, ensuring that B-BBEE's benefits reach a broader population.

Monitoring and evaluation mechanisms are critical to track B-BBEE's progress and identify implementation gaps. The B-BBEE Commission should develop a centralized database to record compliance data, fronting incidents, and empowerment outcomes, enabling evidence-based policy adjustments (Pike et al., 2018). Annual reports on B-BBEE's socioeconomic impact, published transparently, would hold stakeholders accountable and demonstrate the Act's value to skeptics. Independent audits of B-BBEE compliance, conducted by accredited agencies, would further ensure accuracy and credibility (Van de Rheede, 2020). These mechanisms align with global best

practices for affirmative action programs, as outlined in the United Nations' Sustainable Development Goals, which emphasize data-driven approaches to reducing inequality (United Nations, 2023).

Finally, addressing perceptions of discrimination is essential to sustain B-BBEE's legitimacy. Critics argue that the Act's race-based criteria disadvantage non-black groups, fueling resentment (Kleynhans & Kruger, 2014). To counter this, the government should emphasize B-BBEE's role in creating a shared economic future, highlighting its benefits for national growth and stability. Engaging non-black communities in dialogues about the Act's necessity, rooted in apartheid's historical injustices, can foster understanding and reduce tensions (Reuben & Bobat, 2014). By framing B-BBEE as a tool for collective progress, these efforts align with South Africa's constitutional vision of unity and equity.

In conclusion, achieving the B-BBEE Act's transformative goals requires a multifaceted approach that strengthens enforcement, fosters collaboration, raises awareness, addresses structural barriers, and enhances monitoring. By combating fronting and ensuring genuine empowerment, these strategies uphold the principles of substantive equality and advance South Africa's commitment to socioeconomic justice (Albertyn, 2007). Effective implementation of B-BBEE not only redresses historical inequalities but also builds a more inclusive economy, contributing to social cohesion and sustainable development.

9. CONCLUDING REMARKS

The Broad-Based Black Economic Empowerment (B-BBEE) Act represents a pivotal mechanism for addressing the enduring socioeconomic disparities rooted in South Africa's apartheid history. By promoting black economic participation through ownership, management, and skills development, B-BBEE seeks to fulfill the constitutional mandate of substantive equality, as enshrined in Section 9. This paper has explored the Act's role in redressing historical injustices, emphasizing the critical need to combat fronting a practice that undermines genuine empowerment by allowing companies to falsely claim compliance for economic gain.

The analysis underscores that fronting not only perpetuates economic exclusion but also erodes public trust in B-BBEE's transformative potential. Robust anti-fronting measures, including criminal penalties introduced in the 2013 Amendment Act, are essential to ensure the Act's integrity. However, effective implementation requires enhanced enforcement, stakeholder collaboration, and public awareness to foster genuine economic inclusion. The Constitutional Court's jurisprudence, supports these efforts by affirming that affirmative action aligns with substantive equality when it addresses historical disadvantages without causing undue harm.

Despite criticisms that B-BBEE may constitute reverse discrimination, its alignment with transformative constitutionalism justifies its race-based measures as necessary for correcting systemic inequalities. The Act's success hinges on overcoming implementation challenges, such as fronting and elite capture, to ensure benefits reach

a broader black population. By strengthening monitoring mechanisms and promoting equitable access to opportunities, B-BBEE can advance South Africa's vision of a just and inclusive society, contributing to global efforts to reduce inequality. Ultimately, sustained commitment to these strategies will ensure that B-BBEE fulfills its promise of socioeconomic transformation.

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