ECONOMIC EMPOWERMENT AND PERFORMANCE: STRATEGIES TOWARDS INDIGENISATION/BLACK ECONOMIC EMPOWERMENT AND THE PERFORMANCE OF SUCH ENTERPRISES IN NIGERIA AND SOUTH AFRICA, SINCE THE EARLY 1970s TO 2002

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In the course of the drive towards decolonisation, African leaders often emphasised the need for political and economic independence from colonial control. Austen even disregards decolonisation as a turning point in the history of Africa or "an event creating a new economic situation [1]but rather treats it "as a chronological marker for long-term change in the relationship between African Economies and the international system".[2] A basic condition for the achievement of independence was the creation of an independent economy by implementing measures to transfer ownership of resources and enterprises into the hands of citizens, to establish basic industrialisation and control of trade. Extensive debates developed after independence on the capacity of the newly independent nations to extend capitalist economic development and develop relative economic independence. Much of the debate focussed on the capacity of the indigenous people to facilitate such economic development. It was argued that structural constraints imposed by the world economic system might impair such development. On the other hand it was also argued that the development of the economy of the newly independent states depended much less on the impact of the world-economic system than on the internal micro-level factors within the new states. The problem was whether the indigenous 'bourgeoisie' had the ability to organise agriculture, industry and modern services (finance, transportation, and technology) with the object of expanding capitalist production into non-capitalist areas and to innovate to expand production and accumulation.[3] In research on certain African states it was found

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1 H Grimal, **Decolonization: the British French, Dutch and Belgian Empires, 1919-1963 (**Routledge and Kegan Paul, London, 1978), p. 420; CS Ogbuagu, "The Nigerian Indigenization policy: Nationalism or pragmatism?" **African Affairs**, Vol. 82(237), 1982, pp. 241-6.

2 R Austen, **African Economic History** (James Currey, London, 1987), p. 197.

3 PM Lubeck (ed.), **The African Bourgeoisie. Capitalist development in Nigeria, Kenya and the Ivory Coast** (Lynne Rienner, Colorado, 1987), pp. 3-12.

that during periods of intense nationalism, those states had intervened, "directed by the alliance between indigenous bureaucrats and capitalists", to benefit indigenous ownership, support local accumulation and thereby increase indigenous control over the economy.[4] The record of state agencies in achieving planned, collective accumulation "is almost universally abysmal" and "has frightened away indigenous or even foreign investment".[5]

Nigeria and South Africa as British colonies followed different strategies towards economic independence. This paper analyses the two paths towards the transfer of ownership and control, as well as progress towards the transfer of ownership and control to the indigenous population. It assesses the performance of companies under indigenous control. The progress with transfer of ownership was slower when it depended on voluntary market driven transactions, but faster under the statutory determined programme in Nigeria. In the South African context the focus is on the companies listed on the Johannesburg Securities Exchange. The hypothesis is that the transfer of control to the indigenous population was slower in South Africa, but empowerment companies showed stronger performance than in Nigeria.

1. COMPARATIVE STRATEGIES TOWARDS EMPOWERMENT

1.1 Nigeria

The history of Africa in the period before and after decolonisation, displays powerful calls for the termination of African countries' economic dependence or the termination of foreign economic control. Nationalist driven economic policies were implemented in African states. In Tanzania the policy of nationalisation was introduced, because "to imagine, in particular that foreign interests will be motivated primarily by what is best for Africans is to expect the impossible"[6] Nationalisation in terms of the Arusha Declaration represented the Tanzanian brand of socialism and self-reliance. In the case of Zambia indigenisation was implemented along the ideological premises of Humanism.[7] Similar developments in economic nationalism in Kenya, Ghana, Zaïre and Uganda manifested themselves in different degrees of urgency and coherency. In Nigeria General Olusegun Obassanjo linked Nigerian indigenisation to the ideals of the Jai Declaration to build a "disciplined, fair and

4 **Ibid**., p. 13.
5 **Ibid**.
6 P Temu, "Nationalization in Tanzania", **East Africa Journal**, Vol. 1, 1967, p. 37.
7 AA Beveridge, "Economic independence, indigenization, and the African businessman: Some effects of Zambia's economic reforms", **African Studies Review**, 1967, p. 487.

humane African society".[8] Developing countries began to indigenise sectors of their economies to control the supply of resources for basic production processes. This meant that the banking system was often first indigenised. In some African states this meant the nationalisation of banks,[9] but not necessarily.

In Nigeria post-independence nationalist economic policies were an extension of the pre-independence "Nigerianisation" policies, which originally only targeted the transformation of the civil service.[10] After independence in 1957, Nigerianisation of business and industrial enterprises began in 1960. Nigeria was concerned about 'foreign' or 'alien' ownership of leading industries.[11] The debate about the suitable strategy to secure Nigerian control over the commanding heights of the Nigerian economy, fluctuated sharply between nationalisation and Nigerianisation. Powerful pleas were put before the Nigerian House of Representatives in favour of outright nationalisation,[12] but government opposed nationalisation. At the National Conference on Reconstruction and Development in Ibadan, in 1969, the Permanent Secretary in the Ministry of Economic Development, Akene Ayida, declared that the Nigerian government would embark on a comprehensive policy of indigenisation. That would exclude large scale nationalisation of the existing and prospective private enterprises, in fear of the diversion of foreign exchange towards compensation and a scare of foreign investors.[13] The alternative strategy would be indigenisation, i.e. Nigerian equity ownership as a mechanism to retain profits in Nigeria. The aim was Nigerian ownership and management control over manufacturing firms. Asobie explains it accordingly: "It was a policy designed essentially to 'promote an indigenous capitalist class' in Nigeria, to forestall nationalization of foreign and indigenous private enterprises in future; and to provide a sense of security for foreign private investors."[14] Nigerianisation policies of the 1960s led to the indigenisation strategy of the 1970s. The Second National Development Plan

8 O Obassanjo, "The Jaji address", in O Oyediran (ed.), **Survey of Nigerian affairs, 1976-1977** (Nigerian Institute of International Affairs, Nigeria, 1981), p. 141; AO Sanda, **The challenge of Nigeria's indigenization** (Nigerian Institute of Social and Economic Research, Ibadan, 1982), pp. 5-7; O Nnoli (ed.), **Path to Nigerian development** (Codesria, Senegal, 1982), p. 223.

9 GO Ogiogio, "Ownership structure and firm performance in Nigeria's commercial banking industry: A cross-sectional analysis", **African Review of Money, Finance and Banking**, No. 2, 1991, p. 101.

10 YB Usman, **Nigeria Since Independence. The First 25 Years. Vol. 1** (Heinemann, Ibadan, 1989), pp. 8-9; C Jarman, **Nigeria. Reorganization and development since the mid-twentieth century**. Monographs and Theoretical Studies in Sociology and Anthropology in Honour of Nels Anderson. Publication 23 (E Brill, Leiden 1988), pp. 28-9; Sanda, pp. 15-7.

11 A Akinsanya, "Multinational Corporations in Nigeria and Issues of Development", **Genère-Afrique**, Vol. 23(2), 1985, pp. 85-6; C Ake, **Political Economy of Nigeria** (Longman London, 1989), p. 176; Ogbuagu, pp. 245-6.

12 **Ibid.**, pp. 247-8; Usman, p. 9; Sanda, p. 16.

13 AA Ayida and HM Onitiri (eds.), **Reconstruction and development in Nigeria**. Proceedings of a National Conference (Ibadan, 1971), pp. 9-10.

14 A Asobie, "Indigenization class formation and class struggle in Nigeria: An analysis", **African Development**, Vol. 13(2), 1988, p. 45.

(1970-1974) stated: "Experience has shown through history that political independence without economic independence is but an empty shell."[15] Economic independence was interpreted as Nigerian ownership and control of industrial investments, which was regretted to be "extremely slow".[16]

The Second National Development Plan, formulated in the Nigerian Enterprises Promotion Decree of 1972 (NEPD/72), implemented indigenisation.[17] The primary objectives of the NEPD were :

- to create an economically independent country with increased opportunities for indigenous Nigerian businessmen;
- to ensure greater retention of profits accruing from the economic sector; and
- to encourage extra foreign investment in the sophisticated area of intermediate and capital goods production.[18]

Nigerian businesses were placed in two categories, Schedule 1 and Schedule 2. Businesses under schedule 1 were reserved for exclusive Nigerian ownership and Schedule 2 excluded foreigners under certain conditions, depending on the size of the operation and level of indigenous share participation. Schedule 1 reserved 22 enterprises exclusively for Nigerian citizens or associations.[19] In Schedule 2 a further 33 businesses were reserved for Nigerian control, although exemption was granted to large import substitution enterprises.[20] It was nevertheless expected that

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15 Usman, pp. 9-10.

16 **Ibid**., c. Ake, pp. 174-5.

17 Federal Government of Nigeria, **Nigerian Enterprises Promotion Decree**, No. 4, 23 February 1972, prepared by the Nigerian Enterprises Promotion Board, Lagos, December 1973; also see the discussions on NEPD in Nnoli, pp. 217-22; Sanda, pp. 33-46; Ogbuagu, pp. 250-3; Asobie, pp. 45-55.

18 **African Research Bulletin**, 15 June-14 July 1971, p. 2071.

19 Schedule 1 included the following:
Six light or small scale industries (brick and block-making, bread and cake-making, tyre re-treading, candle and garment manufacturing).
Two medium scale industries (manufacturing of jewellery and related articles and singlets).
Two processing industries (blending and bottling of alcoholic drinks and rice milling).
Four service sector businesses (advertising and public relations pool betting and lotteries, hairdressing, laundry and dry-cleaning).
Two media industries (newspaper publishing and printing, radio and television broadcasting).
Commercial businesses (retail trade).

20 Schedule 2 listed another 33 businesses and industrial ventures in which foreigners could not own or be partial owner of.
Twelve large scale import substitution industries (manufacturing of bicycles and motorcycle tyres, cosmetics, furniture, insecticides, cement, matches, metal containers, paints, soaps and detergents, suitcases, nails, wires and hardware items, boat building).
Four processing industries (beer brewing, soft drink bottling, paper conversion, production of sawn timber and other wood). Three food industries (fish and shrimp processing, poultry farming, meat slaughtering, storage and distribution).
Four commercial activities (department stores and supermarkets, distribution of machines and technical equipment, distribution and servicing of motor vehicles, tractors and wholesale distribution). Three transportation businesses (coastal and inland waterways, shipping, domestic air travel and interstate passenger bus transport).

the latter would allow a minimum of 40% Nigerian shareholding and employment of Nigerians in general and management portions.[21] The rationale for enterprises in Schedule 2 was the lack of indigenous expertise.[22] Financing for the purchase of NEPD enterprises, would be provided by commercial banks in Nigeria, as well as specialised and investment banks.[23] (These banks were soon taken over by the Nigerian government.) The NEPD was promulgated on 23 February 1972 and businesses were given until 31 March 1974 to comply. Despite attempts to describe the NEPD/72 as successful,[24] the Industrial Enterprises Panel (appointed by the Federal Military Government to examine the NEPD/72 and to report on possible amendments[25]) reported that only a small portion of foreign enterprises had complied with the decree. Only 33% of the 950 affected enterprises (314) fully complied after inspection by 30 June 1975. Only 58% of schedule 1 and 89% of schedule 2 enterprises complied provisionally.[26] When the Gowon administration was toppled in 1975, the new military leadership under Mohammed Obassanjo described the NEPD/72 as a failure and embarked on a second phase of indigenisation. Since fronting, applications for naturalisation, extended use of the definition of Nigerian citizenship, problems with the interpretation of classification of enterprises and frequent amendments to the original decree were the most popular mechanisms of circumventing compliance,[27] the new NEPD of 1977 attempted to close the loopholes. Provisions pertaining to indigenous and foreign ownership of Nigerian enterprises were revised in the NEPD/77.[28] Compliance was required by 29 June 1977, with certain exceptions in section 7 of the decree, which had to comply by 31 December 1978.[29] Nigerian enterprises were now categorised in three schedules. The innovation of the NEPD/77 was that a new category of enterprises was created in which at least 40% of Nigerian equity participation or interest was guaranteed. This category included 39 enterprises, especially a broad range of manufacturing industries requiring joint indigenous and foreign ownership.

Miscellaneous industries such as book printing, screen printing and cloth dying. Exempted from these prohibitions to foreign ownership were large import substitution industries with paid up share capital exceeding 400 000 or turnover exceeding 1 000 000.

21 Sanda, pp. 37-8; Nigerian Enterprises Promotion Board, **Nigerian Enterprises Promotion Decree. Buying and Selling under the NEPD, 1972** (Lagos, 1973), p. 5.

22 **Ibid**.

23 **Ibid**., p. 6.; See Appendix 4.

24 See the satisfaction expressed by the Gowon government, **Nigeria Today**, No. 56, April 1975, p. 15; Asobie, pp. 54-5; Ake, pp. 174-7; Sanda, pp. 40-1; WO Ozuaga, "The changing pattern and investment climate in Nigeria: Implications of the Nigerian Enterprises Promotion Decree 1972". Paper presented to UN/Dublin Seminar, University of Nigeria, Enugu Campus, 25 January 1978, pp. 29, 34.

25 Federal Ministry of Information, **Federal Military Government's views on the report of the Industrial Enterprises Panel**, Lagos, 1976, p. 3.

26 **Ibid**., p. 4.

27 **Ibid**., also see Nnoli, p. 222; Ogbuagu, p. 253; Asobie, p. 55.

28 Federal Military Government of Nigeria: **Nigerian Enterprises Promotion Decree, No. 3, 1977. Promotion of Nigerian enterprises** (Lagos, July 1977).

29 **Ibid**. Explanatory Note, A34.

Amongst these were engineering industries, manufacturing of basic industrial chemicals and major export industries.[30] The implications were that the very large capital intensive industries were required to have 60 per cent foreign and 40 per cent Nigerian participation. All commercial and industrial ventures, except single non-renewable projects, were fully indigenised.

A full time executive chairman was appointed to the Nigerian Enterprises Promotion Board. The NEPD/77 also restricted the concentration of shares in the hands of individuals to no more than 5 per cent of the equity of an enterprise or to the value of no more than N50 000 (N= Naira, Nigerian currency), which-ever was higher.[31] By the early 1980s the Nigerian Enterprises Promotion Board (NEPB) was satisfied with compliance: of the existing enterprises 77,5 per cent were issued with letters of provisional compliance, but of the new enterprises (the joint venture with foreign entrepreneurs) only 11,4 per cent complied.[32] The Board was especially satisfied with the sale of shares on the Nigerian Stock Exchange, although shares were also sold privately.[33] The Federal Government had obtained majority shareholding (40 per cent) in all of the eleven commercial and merchant banks in Nigeria.[34] The shares of fourteen 'alien' insurance companies were sold to state governments, which later owned them in totality.[35]

The official response of the Nigerian government did not reflect the wider dissatisfaction with the outcome. Of the more than 700 schedule three enterprises, only 81 (11,4 per cent) offered their shares for sale on the Nigerian Stock Exchange - a total value of N210 million. Another 29 companies sold shares to Nigerians via private placements to the value of N14 million, while the remainder sold shares privately.[36] This development, as well as the fact that schedule 1 enterprises had traditionally been the preserve of Nigerians, and that Federal and state governments monopolised most of the schedule 1 enterprises,[37] seriously jeopardised the intention to promote an egalitarian society through indigenisation. The benefits of indigenisation did not broaden the basis of Nigerian participation in the economy - it pro-

30 **Ibid**.; Schedule 3, A32-A33; also see Asobie, pp. 56-8; Akinsanya, pp. 92-3; Ogbuagu, p. 253.

31 Federal Military Government of Nigeria, **NEPD 1977; Decree No. 3, art. 11(c)(i)**, p. A23.

32 Nigeria Enterprises Promotion Board: **Sixth Progress Report on the implementation of the Nigerian Enterprises Promotion Act 1977 covering the period 30 April 1980 to 1 May 1981** (Federal Government Press, Mpapa, 1982), p. 5; also see Asobie, p. 58; Ake, p. 181.

33 **Ibid**., Section 13, p. 8.

34 **Ibid**., Section 6, p. 6.

35 **Ibid**., Section 14, pp. 8, 82.

36 Sanda: p. 76; Ake, p. 181; JO Sanuasi, "Reflections on the indigenisation exercise". **Journal of the Institute of Chartered Accountants of Nigeria**, Vol. 12(2), April/June 1979, pp. 41-2; Nnoli, p. 222.

37 These enterprises are blending and bottling of alcoholic drinks, newspaper publishing, municipal bus services, radio and television broadcasting, supermarket businesses, distribution and servicing of motor vehicles, inter-city haulage and transportation. This does not refer to the government monopoly of control over financial institutions, referred to in footnotes 31 and 32 above.

moted inegalitarian share ownership.[38] Commentators strongly argued that Nigerian government officials and the existing business élite had manipulated the indigenisation process in both phases, leading to wealth concentration at the expense of the Nigerian masses and the perpetuation of the profitable operation of multinational corporations. Meaningful participation in investment opportunities remained inaccessible to the majority of Nigerians. Akinsanya argued that multinational corporations maintained control by means of :

? concluding technical agreements for the training of indigenes to ensure that the MNCs operated as before;
? loopholes in indigenisation decrees such as foreign capital providing the finance for the acquisition of shareholding;
? negotiating exemptions from provisions of indigenisation decrees;
? 'fronting' - choosing the 'right' local partners;
? amending voting regulations or articles of association to guarantee veto power to minority shareholders in management ;
? unilateral violation of the law;
? bribing corrupt public servants to circumvent the indigenisation decrees;
? appointment of retired civil servants as Corporations' Chairmen to serve as links between the Corporations and government.[39]

To illustrate, Sanusi stated: "I have no doubt in my mind that the second phase of the indigenization exercise has been successfully implemented in so far as the transfer of share ownership is concerned,"[40] but the appendices of the NEPB Sixth Progress Report reflect the following: In Leyland (Nig.) Ltd. private Nigerians only held 1,04 per cent of the shares, as opposed to 52,5 per cent held by the Federal government and the state governments of Oyo, Ogun and Ondo and the Nigerian Industrial Development Bank, which was also government controlled. In the shareholding of Volkswagen of Nigeria Ltd., the federal and Lagos state government held 39 per cent of the 49 per cent owned by Nigerians, while the remaining 10 per cent was owned by two Nigerian motor companies. In the Anambra Motor Manufacturing Company federal and state governments owned 53,4 per cent of the shares, while only 46 per cent was owned by private Nigerians or companies.[41]

Technical, entrepreneurial and managerial expertise remained problematic.[42] The indigenisation policy needed reconsideration. Nigeria suffered from high capital

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38 Sanda, pp. 68-76, 88, 90-4; 114-5; Nnoli, p. 223; Ake, pp. 181-4; Sanusi, pp. 41-2; Asobie, pp. 63-6, 68.
39 See National Institute for Policy and Strategic Studies, **Proceedings of the workshop on the Economic Stablization Act of 1982. Its impact on the Nigerian economy with particular reference to the indigenization policy**, 26-27/04/82; Kuru, p. 24; Ogiogio, p. 102.
40 Sanusi, p. 42.
41 NEPB: Sixth Progress Report ..., Appendix 7B, pp. 83-4.
42 Sanda, pp. 93-4, 110-2; Sanusi, p. 42; Ake, p. 184; Uzoga, p. 35; Ogbuagu, pp. 263-5.

flight[43] and was forced to amend the NEPD/77 to encourage the return of foreign investment, particularly in the industrial sector. The civilian government under President Shagari enacted the Nigerian Enterprises Promotion Order of 1981. Certain enterprises were transferred from Schedule 1 to Schedule 2[44] due to a 'lack of interest' in such enterprises by Nigerians and others from Schedule 2 to Schedule 3,[45] because of the huge capital expenditure required and the long gestation period of returns on such investment.[46] The indigenisation policies resulted only in a shift in the concentration of foreign private investment in Nigeria. Before indigenisation 47,2 per cent of foreign private investment was in mining and quarrying and 22,4 per cent in manufacturing. By 1982 35,7 per cent of foreign private investment was in manufacturing and processing and 18,1 per cent in mining and quarrying. Furthermore between 1972 and 1982 foreign private investment rose in agriculture, forestry and fishing (from 0,4 per cent in 1972 to 2,2 per cent in 1982), in transport and communication (from 0,66 per cent in 1972 tot 1,3 per cent in 1982) and in trading and business services (from 16,7 per cent in 1972 to 27,6 per cent in 1982).[47] Whereas indigenisation thus promoted the transfer of ownership of business enterprise to Nigerians, doubt existed about the *effective* transfer of control and in certain sectors (cited above), it became apparent that foreign investment and expertise were vital. The changes to NEPD/77 reflected reduced antagonism towards foreign involvement, but introduced a reduction of state control, thus privatisation. In the 1980 published **Nigerian Industrial Policy and Strategy: Guidelines to Investors**,[48] the emphasis shifted from the transfer of control to Nigerians, to an overall "nurturing (of) the private sector of the economy".[49] Table 1 shows how Gross Domestic Product (GDP) at market prices had slowed down dramatically since the 1970s and by the mid-1980s they moved into negative growth. There was a similar declining trend visible in Africa in general (see Table 1), but the slowdown on the continent in general was less rapid and never negative. The general negative trend is substantiated by the African Development Bank's calculations of real GDP, as illustrated in Table 2.

43 Uzoaga, pp. 10, 34; Asobie, pp. 58-9; Ake, pp. 185-6; National Institute for Policy and Strategic Studies, **Proceedings of the workshop...**, pp. 5-6.
44 The manufacturing of garments, jewellery, rice milling and watch repairs were transferred to schedule 2.
45 The manufacturing of fertilizers, cement, metal containers, establishment and running of agricultural plantations for raising tree crops, grains and other cash crops.
46 Federal Government of Nigeria, **Nigeria Enterprises Promotion (Alteration lists of scheduled enterprises) Order 1981**, Explanatory Notes (Lagos, 1981).
47 Asobie, pp. 63-4.
48 Usman, p. 13.
49 **Ibid**.; quoting the **Nigerian Industrial Policy and Strategy: Guidelines to investment**, p. 22.

Table 1: Gross Domestic Product at market prices (constant 1995 US$m), 1970-2000

	Nigeria	Percentage change*	South Africa	Percentage change	Africa	Percentage change
1970	14 069,8		90 558		236 589	
1975	18 446,3	7,0	113 107	5,71	298 102	5,94
1980	22 357,4	4,9	127 410	3,02	360 240	4,84
1985	19 161,7	-3,7	132 404	0,96	401 984	2,77
1990	24 863,3	6,72	144 762	2,25	457 819	3,30
1995	28 108,8	3,11	151 113	1,07	497 904	1,86
2000	32 184,4	3,44	170 568	3,07	588 385	4,52
1970-2000		2,85		2,17		3,14

Source: McGregor BFA Data System : African Development Bank (www mcgbfa.com)
Annual compound growth

Table 2: Gross Domestic Product (real) US$ Growth rate, 1980 – 2001

	Nigeria %	South Africa %	Africa %
1980 -1990	1,7	2,1	3,0
1991 – 1997	2,8	1,4	2,5
1991 - 2001	3,0	1,8	2,0

Source: African Development Bank: **African Development Report, 1998**, Oxford University Press, p. 205.
African Development Bank: **African Development Report, 2002**, Oxford University Press, p. 230.

The privatisation drive resulted from the influence of liberal market orientated economic policies to attract foreign investment. The Federal Government commenced with the privatisation of state owned companies and addressed the concentration of wealth by reserving 10 per cent of ownership of privatised enterprises for workers.[50] In a policy document, **Nigerian Industrial Policy and Strategy: Guidelines to Investors**, the Federal Government declared that "the watch-word in national industrial planning and strategy is the full recognition of private enterprise and initiative as the full responsibility of the state".[51] While privatisation was thus promoted, government encouraged private companies into sectors of the economy

50 **Ibid**.
51 Federal Government of Nigeria, **Nigerian Industrial Policy and Strategy: Guidelines to investors** (Lagos, 1980), p. 14.

previously reserved for the state, such as the airline industry. The government also legislated the privatisation of state and communal land in 1984. Multinational capital was permitted to purchase 80 per cent of the farm land in the country for the exploitation of private commercial interest.[52] These initiatives to "nurture the private sector of the economy",[53] shifted the indigenisation policies from nationalisation in the early 1970s towards a liberal market orientation. The adjustment process started in June 1986 when the public sector was required to divest itself from private sector activities through a commercialisation and privatisation programme, ultimately backed by Decree 25 of 1983. In a sense, some aspects of the indigenisation policy were being reversed.[54] As admitted by the **Report on Vision 2010 Economic Direction**, "indigenisation did not generally shift control to Nigerians and it significantly reduced foreign direct investment and interest in Nigeria".[55] Whereas it had been the objective of the Nigerian government to strengthen Nigerian ownership of industries, Vision 2010 cited two reasons for the failure of the Nigerian industrialisation process as the "high import dependence for skilled manpower and industrial input" and "funding problems (lack of domestic savings and restrictions on foreign ownership)".[56] Vision 2010 also acknowledged that despite substantial investment by 'the nation' in pipelines, refineries, petrochemicals and fertilizer plants, "the downstream petroleum sub sector is in a state of decay, characterised by inadequate funding, poor operating conditions in sufficient and irregular supply of products and a highly regulated environment".[57] In the statement on "where we want to be", Vision 2010 then declares: "In view of the lessons of the present global and Nigerian economic realities, Nigeria's economic aspirations shall henceforth be to make Nigeria a more industrialised nation with economic power that continually strives for sustained economic growth and development towards improving the quality of life for all Nigerians. Elements of these aspirations include the following: ... Promotion of indigenous entrepreneurship and building of a strong and viable indigenous private sector; opening up the economy to participation by more indigenous and foreign investors".[58] The gradual trend of recovering GDP growth is illustrated in Table 1 and Table 2.

In assessing the indigenisation policies of Nigeria, there is consensus about the success with the transfer of ownership to Nigerians. There is simultaneous acknowledgement that only an élite of Nigerian businessmen and the Nigerian government benefited from that transfer. Indigenisation failed to promote the

52 Usman, p. 13.
53 Federal Government of Nigeria, **Nigerian Industrial Policy...**, p.22.
54 Ogiogio, p. 103.
55 The Nigerian Embassy, **Report on Vision 2010. Economic Direction**, 2003, p. 4.
56 **Ibid**., p. 8.
57 **Ibid**., p. 9.
58 **Ibid**., pp. 15-6.

emergence of broad-based indigenous ownership, but enhanced state ownership. Consequently post-indigenisation policies brought a reversal of such concentration effects through the introduction of privatisation policies during the 1980s and a re-invitation of foreign investment back into the Nigerian economy at the same time. These policy initiatives were translated into the Vision 2010, which clearly echoes the broad economic policy statement of the New Economic Path to Africa's Development (NEPAD). The indigenisation policies reserved a powerful position to the Nigerian state and the existing business élite. It has been virtually impossible to obtain comprehensive statistics on the performance of Nigerian companies after indigenisation. C Ake states: "There is unfortunately no good data base for judging with accuracy the impact of indigenization on the performance of enterprises and on productivity."[59] The growth of real GDP in Nigeria showed a substantial decline from 18,4 per cent in 1971/72 to 9,7 per cent in 1974/75, and further to 5,5 per cent in 1980, 4,8 per cent in 1991 and 3,3 per cent by 1996.[60] As illustrated in Tables 1 and 2, the recovery only came when the Nigerian government introduced privatisation in the early 1990s.

An economic slowdown manifested itself in the period most affected by indigenisation. The Nigerian government subsequently decided on privatisation and reconsidered foreign investment. As Asobie argued: "Indigenization ... gave a greater role to the state in the economy ... and set in motion, the contradictions which have now, paradoxically, brought indigenization to a dead end."[61] Ogiogio also argued that "the indigenization decree is a policy error. Public sector participation in areas for which the private sector is notably more efficient amounted to serious waste of resources. The sale of foreign equity holdings in highly indigenized firms and the voluntary closure of firms which could not comply with the decree resulted in huge capital outflow ... There is no doubt that the impact of the indigenization exercises has had a negative effect on the growth of private investment in this country."[62] In one area where specific evaluation of post-indigenisation performance had been undertaken (commercial banking), Ogiogio found that foreign owned banks performed better and were the leaders in commercial banking in Nigeria - better than those banks with only indigenous shareholding. The higher profitability of those banks could be directly linked to the utilisation of foreign investment and management skills.[63]

59 Ake, p. 184.
60 **Ibid**.; Nigerian Embassy, **Report on...**, p. 1.
61 Asobie, p. 75.
62 Ogiogio, pp. 102-3.
63 **Ibid**., pp. 110-2.

1.2 Towards 'indigenous' control in South Africa

'Indigenisation' in South Africa is popularly referred to as Black Economic Empowerment (BEE). As in Nigeria where 'nigerianisation' of the economy appeared in official policy statements since the late 1950s, after which the debate shifted between nationalisation and indigenisation,[64] calls for and discussion about increased black participation in the mainstream South African economy surfaced since the mid-1970s. After the 1976 riots, 'black advancement' was formulated as a set of measures to be implemented by multinational corporations to improve the conditions of employment of their black employees (the so-called Sullivan Code)[65] The emphasis then shifted towards equal opportunity programmes during the 1970s, as a response by the corporate business environment to the socio-political environment in South Africa.[66] After the unbanning of political parties in1990 the term 'affirmative action' was used to refer to strategies to restore 'historic imbalances' in the South African economy, but it was soon replaced by the concept 'empowerment'. Empowerment aimed at the strengthening of society by building capacity, skills and equal opportunity for all people and was driven by the corporate business sector - not government or political parties in South Africa. [67] This presents an important difference between the trend among African nations in the post-decolonisation era and South Africa: most African nations displayed a strong resentment of foreign control over their economies and utilised the sovereign state to expropriate private-owned enterprises.[68] Indigenisation in Nigeria was even described as "one of the most important areas of state intervention in the economy".[69] BEE in South Africa was never aimed at terminating foreign control of business. It was private sector driven and tried to reduce ideological threats of nationalisation and promote market orientated economic policies. The critical policy issue was the integration of the black majority into the mainstream economy by facilitating the transfer and control from white South Africans to black South Africans. In South Africa it was clearly a racial issue. Sidiropolous wrote: "Black economic empowerment encompasses, among other things, black entry into

64 See TJ Biersteker, "Indigenization and the Nigerian Bourgeoisie: Dependent development in an African context", in Lubeck p. 255.

65 PM Madi, **Black Economic Empowerment in the New South Africa. The rights and the wrongs** (Knowledge Press, Randburg, 1997), p. 7.

66 **Ibid**., pp. 7-9; also see G Verhoef, "'The invisible hand'…": The roots of Black Economic Empowerment, Sankorp and societal change in South Africa, 1980-2000", **Journal of Contemporary History**, Vol. 28(1), pp. 27-47.

67 See Verhoef, "'The invisible hand'…"; WG Kruger: **Black Empowerment: An economic evaluation of future investor attractiveness** (Unpublished MBA Research Report, University of Cape Town, 1998), pp. 7-8; Black Economic Empowerment Commission (BEEC): **Policy White Paper on BEE** (Skotaville Publishers, Johannesburg,2001), p. 5.

68 A Akinsanya, "Host Governments' responses to foreign economic control: The experiences of selected African countries", **International and Comparative Law Quarterly**, Vol. 30, 1998, pp. 76-7.

69 Biersteker, p. 255.

business as owners and as managers, advancement in the workplace through the erosion of the industrial colour bar, unionization, acquisition of equity, redistribution of existing wealth, and the rise of the black consumer."[70] Cyril Ramaphosa defined Black Economic Empowerment as "… economic empowerment for all South Africans - (it) is a very deliberate programme to achieve meaningful participation of disadvantaged South Africans in the mainstream South African economy".[71]

BEE was introduced in two stages. First it was private sector driven and since 1998 private initiatives called for state institutional sanctioning. The first phase of BEE was characterised by negotiated corporate transactions to facilitate the acquisition of equity ownership by black shareholders on the assumption that business would remain within the capitalist market orientated model. BEE was formulated as a prerequisite for the recovery of the weakened apartheid distorted economy.[72] (GDP growth declined from 1,4 per cent in 1983-1988, to -2,2 per cent in 1992 , while foreign direct investment declined from $6,2 billion between 1976 and 1980 (average), to $6,9 billion in 1993.[73]) In 1991 SANLAM (a giant life assurer in South Africa) negotiated the sale of 10 per cent of the equity in its subsidiary, Metropolitan Life, to a black consortium. The holding company for the acquisition of the shares was called Methold. Within two years SANLAM sold another 20 per cent of its shares to Methold and in August 1994 Methold was listed on the Johannesburg Securities Exchange as NAIL (New Africa Investments Limited).[74] This pioneering transaction was privately financed (with no state involvement or funding) without statutory enforcement.

The role of the state in South Africa was limited to the formulation of the Reconstruction and Development Programme (RDP) as an integrated policy framework to address socio-economic problems.[75] The RDP claimed to integrate economic growth, development, reconstruction and redistribution into one consistent programme,[76] which meant that it departed from the elementary socialist redistribution rhetoric which relied solely on wealth distribution. The ANC indicated that it would embark on capital expenditure as a means to alleviate

70 E Sidiripoulos, "Black Economic Empowerment", **South African Institute of Race Relations, Spotlight,** No.2,September 1993, p. 1.
71 C Ramaphosa, "Empowerment. The future of black business", **Boardroom**, Vol. 2, 1997, p. 12.
72 Verhoef: "'The invisible hand'…".
73 South African Reserve Bank 1985-1993. **Quarterly Statistical Bulletin**.
74 Verhoef: "'The invisible hand'…"; MA Mphuti, **Black Empowerment in South Africa: Evaluating the progress since 1994** (Unpublished M.Comm. dissertation, Rand Afrikaans University, 1999), pp. 37-8.
75 ANC, **Reconstruction and Development Programme** (Umanyano Publishers, Johannesburg, 1994).
76 **Ibid**., par.1.3.6.

unemployment, and expected private sector investment expenditure to respond to such public expenditure programmes.[77] The RDP intended to fight poverty through infrastructural development and through "a dynamic balance between government intervention, the private sector and the participation of civil society".[78] Public sector investment would support private sector investment in stimulating reconstruction and development[79] through co-operation between the different stakeholders in the country, within a market framework.[80] The RDP nevertheless kept the door open for the nationalisation of national assets (par.4.2.5.1.).

The RDP emphasised co-operation between the public and private sector to alleviate poverty and the facilitation of Black Economic Empowerment. "The domination of business activities by white business and the exclusion of black people and women from the mainstream economic activity are cause for great concern for the reconstruction and development process. A central objective of the RDP is to deracialise business ownership and control completely through focused policies of Black Economic Empowerment. These policies must aim to make it easier for black people to gain access to capital for business development. The democratic government must ensure that no discrimination occurs in financial institutions. State and parastatal institutions will also provide capital for the attainment of BEE objectives. The democratic government must also introduce tendering procedures which facilitate BEE. Special emphasis must also be placed on training, upgrading and real participation in ownership."[81] This policy statement displayed an important deviation from the Nigerian indigenisation process and the general indigenisation trend in other African states : the role of government was initially limited to the facilitation of increased private black access to business. Government would not nationalise businesses or discourage foreign multinational corporations to gain control over designated sectors of the economy.

After the SANLAM BEE deal various other transactions were concluded. In 1994 none of the approximately 680 companies listed on the JSE was black owned.[82] In 1994 market capitalisation of BEE companies listed on the JSE was around R4 billion. In January 1995 black controlled companies represented 0,5 per cent of the total market capitalisation of the JSE or R4,6 billion/$0,8bn. By November 1996 the figure had risen to 6,3 per cent and by April 1997 it had grown to 8,6 per

77 **Ibid**., par.2.3.
78 **Ibid**., par. 4.2.3.
79 **Ibid**., par. 4.2.4.
80 **Ibid**., par. 4.2.6.
81 **Ibid**., par. 4.4.6.3.
82 B Ryan, "Blacks gamble for a pot of gold", **Financial Mail**, May 1994, p. 38.

cent, representing a market capitalisation of R36 billion.[83] By mid-1998 BEE market capitalisation was 6 per cent and in January 1999 R58,7 bn/$9,8 bn, or 5,5 per cent. The decline was the result of the 1998 market crisis. Too many BEE deals were financed through debt instruments to encourage a high degree of deal flow, which caused a debt build-up rather than an asset base. The market crisis thus left them with unsustainable gearing ratios. The Special Purpose Vehicles (SPVs)[84] established to facilitate the empowerment transactions, were premised on a bull market. When the market turned bearish, those companies struggled to meet financial obligations and were pressured to sell recent acquisitions. Business Map argued that the SPVs protected the empowerment companies from capital risk, thus contributing to the distortion of normal business practise and compromised direct control over operations. BEE transactions blossomed in 1995: 22 BEE deals were concluded; another 45 in 1996 and by the end of 1998 the number of deals stood at approximately 100. Between 1998 and 1999 only, the deal flow rose by 320 per cent. [85] It remained difficult to record all BEE transactions, since many were in unlisted companies.

By January 1999 35 black controlled companies were listed on the JSE, with a combined market capitalisation of R58,7bn or 5,5 per cent. There were two broad categories of black-controlled companies: the investment holding companies that bought into established corporations on the premise of being BEE companies. These first generation companies listed soon after establishment, thus providing access to capital and reducing dependence on gearing, while maintaining control through the issue of non-voting shares. The other category was established corporations in which black firms bought a controlling interest. Black influenced companies were companies in which blacks owned shares. By January 1999 there were 76 black influenced companies, controlling assets to the value of R18bn out of the total value of R115bn of those companies. (Blacks owned 5 per cent or more,

83 M Mittner, "Swart Groepe. Dit groei net", **Finansies en Tegniek**, Vol. 49(28), 25 July 1997, p. 49; J Cargill, **Empowerment 1999. A Moving Experience** (Business Map, Johannesburg, 1999), p. 3.

84 "Black economic empowerment in listed companies has been facilitated by the redeemable preference share financing mechanism, centred on the creation of a new type of company known as an SPV." On agreement to sign a deal, an SPV is created, receives money from the financier in return for a number of debt and equity preference shares. The money is used to buy shares in a target company (usually at a sizeable discount). The BEE company thus holds the ordinary shares which have the voting rights. The prefs are redeemable after a period of time (10 years). "The basic philosophy is that, in exchange for the perceived value the black group will add to the earnings potential of the company, for the discount to market and for the fact that large stakes in listed companies are difficult to obtain in the market, the financier is willing to give away to the black group about half the upside that could have been attained if it had invested directly in the listed company. The financier takes all the downside risk." This worked well in a bullish market, but when the market turned bearish and interest rates rose, dividend earnings were insufficient to cover the debt, which then had to be rolled over. See J Cargill, p. 9.

85 Kruger, p. 9; Cargill, pp. 3-4,20.

but not control, in black influenced companies.[86]) The sectors in which black empowerment was most active between 1995 and 1998, were:

- Financial services - 22 deals worth R9,3bn were concluded between 1986 and 1998. At least another 80 deals were concluded without disclosure of value. Financial services underpinned the expansion of the largest black controlled firms, such as New Africa Investments Limited (NAIL).
- Information technology and telecommunications. The government Information Technology (IT) demand, was responsible for the R4,5bn value of empowerment transactions.
- Print, publishing and broadcasting transactions valued R3,9bn. Empowerment in this sector were driven by government privatisation of radio stations, issuing of new broadcasting licenses and political pressure in the printed media sector.
- Industrial holding concerns did transactions to the value of R2,9bn, with Johnnic being the most prominent investment through the National Empowerment Consortium.
- Then food and beverages did empowerment transactions to the value of R2,3bn. This sector was specifically empowerment orientated due to the market focus of this sector and the number of black consumers. [87]

Smaller investments were made in agriculture, forestry, fishing, catering, construction and materials, energy and oil, but more activity was expected. The most active deal-makers were the same people since 1995, which included trade union companies, firms with a strong presence of former anti-apartheid activists and those which could source their roots to a business history. One of the most unexpected features of BEE in South Africa, was the participation of the trade unions in private investment activity. One of the prominent unions, SARHWU (South African Railways and Harbour Workers' Union) invested directly in Mercantile and Lisbon Bank Holdings (8 per cent), 9,5 per cent in Netcare, a private hospital group, 50 per cent in Bond Industries, 20 per cent in ITI Technology Holdings, jointly with other unions 5,3 per cent in Safrica Insurance, 10 per cent in Screenworld and 10 per cent in Supergroup (a retailer).[88] The first unions to actively seek investment through their own companies, were the National Council of Trade Unions (Nactu), the Cosatu-linked National Union of Mineworkers (NUM) and the South African Clothing and Textile Workers' Union (Sactwu).[89] The unions had long demanded influence over investments made by their pension funds, but the union investment companies were separate from the pension and provident funds. These union

86 Cargill, pp. 20-5.
87 **Ibid**., pp. 21, 58.
88 Business Map, **Black Economic Empowerment Review, 1997**, pp. 47-8.
89 **Ibid**.

investment companies brought to the deal-making process a form of representation of a broad investment community not often encountered. By 1999 the value of investments controlled by unions exceeded R10 million. More than 60 investments were made by more than 10 union investment companies. The most prominent was SARHWU Investment Holdings, Cosatu's Kopano ke, the National Union of Manufacturing Workers (NUMSA) Investment Trust and the NUM Matla Investment Company, often investing together with the SACTWU Investment Company. The sector profile of union investments is noteworthy: media (particularly broadcasting), fishing, tourism (including casinos), financial services and information technology - the last three being regarded as growth sectors, while the first two (media and fishing companies) responded to government requirements for the issuing of licenses.[90]

Government acted as environmental facilitator for BEE. Apart from the RDP guidelines, government promoted the development of Small, Medium and Micro Enterprises (SMMEs) by establishing funding institutions. The First was Khula Enterprise Finance Facility (KEF) mandated to finance SMMEs as an independent company capitalised by government. KEF was one of five national development finance institutions - the others were the Development Bank of South Africa, the Industrial Development Corporation, the National Housing Finance Corporation and the Land Bank. Government also privatised state assets to facilitate empowerment, but by 1998 had not yet contributed substantially to BEE. [91] The government frustrated BEE by a lack of a coherent empowerment strategy and slow ad hoc measures to translate its intentions into actions.

BEE companies performed impressively in the short period up to 1998. Of the 17 JSE listed eleven outperformed their sectoral average by 1997, compared to only two in 1995. Share prices of ten of the BEE companies outperformed the JSE All-Share Index(Alsi).[92] By 1999 14 of the 29 JSE listed BEE companies outperformed the JSE's Alsi - a reduction of 3 per cent on the previous year, but 13 companies maintained higher p/e ratios than their respective sectors. BEE firms were nevertheless more volatile than the Alsi - only six were less volatile.[93] The main concern lay in the depth of empowerment. Other dimensions of empowerment (such as training, small business development and improved earnings by more people) were eclipsed by equity acquisitions in big corporations.

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90 Cargill, pp. 70-2.
91 Business Map, pp. 8-13.
92 **Ibid**., p. 16.
93 Cargill, p. 32.

The second generation BEE was introduced in 1998, as a result of a sense of under achievement in BEE, when the Black Management Forum (BMF), an organisation of black businessmen, resolved that black people should direct a new vision for BEE. The BMF established a permanent commission to manage BEE: "The motivation for the establishment of the commission is that the notion of true empowerment as defined by black people does not exist, nor does a common definition or benchmark which serves as minimum requirement. Many deals are concluded by organisations, including government structures, that fall far short of recognising the true aspirations of the marginalised black majority all in the name of Black Economic Empowerment." [94] The BMF urged an holistic approach towards black empowerment: to formulate a coherent strategy for empowerment which would address issues of economic growth in order to end the contraction of formal employment opportunities, poverty of the masses and improved levels of formal education. The Black Economic Empowerment Commission (BEEC) was formally established in May 1998 under the auspices of the Black Business Council (BBC), an umbrella body representing eleven black business organisations. The BMF observed a lack of a national vision for BEE, which had been driven by white institutions.[95] The BEEC then set out its objectives :

- To gain insight into the BEE process through empirical research and make observations on the pace and results of BEE initiatives during the 1990s.
- To identify the obstacles to meaningful participation of black people in the economy.
- To develop a case for an accelerated National BEE Strategy and to make recommendations on policies and instruments required to guide a sustainable strategy.
- To develop benchmarks and guidelines to monitor the implementation of such national strategy.[96]

The BEEC wanted BEE to be developed as part of the government's new Growth Plan for the economy (Growth, Employment and Redistribution (GEAR) strategy). As reflected in Table 1 GDP had slowed down from 3,02 per cent in 1980 to less than one per cent in 1985, and recovered to just over 2 per cent by the early 1990s, after which it slowed down again. Table 2 reflects the urgency of a commitment to a growth strategy: Real GDP growth dropped to below 1,5 per cent by 1997. The BEEC's approach thus dovetailed into the weakening economic circumstance. The BEEC 2001 National Integrated BEE Strategy defined BEE as "an integrated and coherent socio-economic process. It is located within the context of the country's

94 BEEC, **A National Integrated Black Economic Empowerment Strategy**, p. 1 - resolution accepted by BMF, Stellenbosch, November 1997.
95 **Ibid**.
96 **Ibid**.

national transformation programme, namely the RDP. It is aimed at reducing the imbalance of the past by seeking to substantially and equitably transfer and confer the ownership, management and control of South Africa's financial and economic resources to the majority of its citizens. It seeks to ensure broader and meaningful participation in the economy by black people to achieve sustainable development and prosperity."[97]

Where the emphasis during the formative years of BEE was on the attraction of black business into the main stream of the economy and equity acquisition transactions which ensured control over substantial assets in JSE listed companies, the BBC was concerned about the real empowerment impact of such deals: "The challenge facing black business is to become a dynamic force for change mobilising other sectors of society behind a developmental agenda. Black business has a responsibility to play an activist role to champion transformation efforts in the economy as a whole and within their profession and places of work." [98] BEE had to reach the masses and address their development needs. By the time of the formulation of the national strategy in August 2000, black controlled companies accounted for only 1,7 per cent of the market capitalisation of the JSE.[99]

The BEEC integrated strategy set out the following targets to be achieved within ten years:

- At least 50 per cent of productive land to be black controlled (individuals and collective enterprise).
- Equity participation in each sector of the economy to be increased to 25 per cent. Where it is 25 per cent already, the target is 50 per cent. (Equity participation means ownership measured in terms of economic interest.)
- Blacks (business and collective enterprise) should hold 25 per cent of shares in JSE listed companies.
- At least 40 per cent of non-executive and executive directors of JSE listed companies should be black.
- At least 50 per cent of state-owned enterprises and government procurement should go to black companies, of which 30 per cent must be black companies.
- At least 30 per cent of private sector procurement should go to black companies.

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97 **Ibid**., p. 2.
98 **Ibid**., p. 7.
99 **Ibid**., p. 6.

- At least 40 per cent of senior and executive management in private sector companies should be black (in companies with more than 50 employees).
- The Human Resources Development strategy should ensure that 40 per cent of people in professions and professional training should be black.
- The Higher Education and Training must increase its participation rate to 20 per cent.
- At least 50 per cent of borrowings (by value) by the National Development Finance Institutions should be to black-owned companies.
- At least 30 per cent of the equity of privatised state-owned companies should be allocated to black companies.
- At least 30 per cent of long-term contracts and concessions in public-private-partnerships (PPPs) within the public sector should include black owned companies and collective enterprises.
- At least 40 per cent of government incentives to the private sector should go to black companies.
- The banking sector and government should agree on targets with respect to accessibility of financial services to black entrepreneurs, SMMEs and black households in rural and urban areas.[100]

These targets were ambitious and envisioned the state driven model for empowerment that failed in African states. The strategy states that "The private sector's participation in BEE has been inadequate and in some instances self-serving. The activities in which it has engaged, have not resulted in meaningful economic participation of the majority of our people."[101] The BEEC refers to 'white private sector', which reflected the perception that white people dominated business. One of the co-authors of the integrated strategy, Duma Gubule, stated: "The truth is that the report adopted a broad definition of BEE… the unanimous view was that the white media and corporate financiers had popularised a narrow definition of BEE. It was decided that the commission should popularise a broader definition."[102] The state was thus now called upon to drive the process: "Left alone markets tend to reinforce the existing distribution of income and assets. This is especially so in the context of globalisation….The state should therefore operate in an intelligent and responsive manner to lead the growth and development process. …it must use its leverage in order that we build a globally competitive nation."[103] The strategy to involve government would focus on facilitation and not taking over of enterprises, as the Nigerian government had done, since the global trend was to

100 BEEC, pp. 8-9.
101 **Ibid.**, p. 35.
102 **Financial Mail**, 14 September 2001, ": The real buzz on Empowerment".
103 BEEC, p. 6.

support the role of private enterprise as the driving force in market orientated economies.

By 1998 the BEE environment changed. The integrated strategy, published in 2001, attempted to take control of the process. Between 1998 and 2001 legislation was passed, which contributed towards a more comprehensive programme; the state, for example, determined conditions for new businesses. In broadcasting the Independent Broadcasting Authority (IBA) required black equity ownership for the granting of radio and free-to-air television licenses. In the tendering for the national lottery there were a range of empowerment requirements. When allocating the third cellular license, the SA Telecommunications Regulator required a 25 per cent black empowerment ownership of the successful bidder. The *Marine Living Resources Act, No. 18 of 1998* required bidding for long-term catching rights and preference was given to SMMEs and black-owned companies. The *National Empowerment Fund (NEF) Act, No. 105 of 1998* established a trust to assist historically disadvantaged persons (HDI's) in obtaining income generating assets and capital for the establishment of empowerment entities to capitalise empowerment initiatives. The *Employment Equity Act, No. 55 of 1998* determined 'employment equity' for certain categories of people to ensure employment. The *Skills Development Act, No. 97 of 1998* promoted the development of strategies to improve the skills of the broad South African population. The *Skills Development Act, No. 9 of 1999* required employers to pay a skills development levy calculated on the basis of the wage bill and 1 per cent per annum, to pay for skills development. In 2000 the *Preferential Procurement Policy Framework Act, No. 5 of 2000* determined that state organs had to formulate a preferential procurement policy and implement it within a system that allocates 10 to 20 per cent of tender evaluation points to specific goals. These goals include " contracting with persons or categories of persons historically disadvantaged by unfair discrimination on the basis of race or gender or disability". The National Treasury, in regulating PPPs, required the following empowerment conditions in tenders:[104]

[104] Business Map, **Empowerment 2000. New Directions**, pp. 49-52; Business Map, **Empowerment 2002. The State steps in**, p. 37. Here are three examples of PPPs that reached financial closure in 2001, which illustrate the empowerment potential of PPPs. In KwaZulu-Natal the Inkosi Albert Luthuli Central Hospital was completed, but needed equipment and facilities management. An SPV (contracting company) was established comprising of six stakeholders: Siemens Ltd, 30 per cent, AME, 21 per cent, Vulindlela Holdings, 26 per cent, Omana Investments, 7 per cent and Mbekane Health and Wellbeing, 7 per cent. The last three were empowerment companies of which the last two were exclusively owned by women. The project was for a 15 year period and had a net present value of R5 billion. The other one was in the Northern Cape where the fleet management of the provincial government was allocated to Pemberley Investments (Pty), which comprised of Imperial (Pty) and an empowerment company, Afrika Kosini (Pty). Afrika Kosini held 25 per cent of the equity in Pemberley as well as all the significant roles in management. The value of the contract to manage, repair and lease on long as well as short term, motor vehicles to the provincial government, amounted to R37 million over five years. Approximately 25 per cent of sub-contracting would be allocated to empowerment companies. The last was in the Limpopo

- A specified black equity in the private company (usually an SPV).
- Specified black management in the SPV.
- Specific empowerment sub-contracting arrangements.
- Local community equity and/or other direct local development benefits.
- Skills development initiatives.

By the end of 2002 BEE developed a broader base, but targets for implementation were not yet set. Cargill comments: "The past year has once more been a difficult one for black empowerment (BEE), highlighting in some respects little change and in others, a discernable shift in effort to improve the quality of empowerment. In a sense, we are caught in the tension between the new and the old, waiting for a new trend in empowerment to emerge, but uncertain of its content and weighted down by difficult economic conditions." [105] The empowerment environment emerged more multidimensional subsequent to the legislation passed to ensure employment, skills acquisition and procurement practices to favour blacks. Ownership as a mechanism of empowerment was questioned as well as the definition of empowerment. Aspects of exact targets proposed in the BEEC Integrated Strategy caused considerable disagreement and unsettled foreign investors. The first 'leak' of a proposed empowerment charter for the mining industry in July 2002, resulted in a drastic reduction of foreign portfolio investment holdings. On a quarterly basis non-residents became net sellers of domestic equity for the first time since the fourth quarter of 1996. Portfolio investments in South Africa dropped from an inflow of R15,7 billion in the second quarter of 2002 to an outflow of R12 billion in the third quarter of 2002.[106]

This paper considers the development of BEE between 1993 and 2002, but suffice it to refer to the South African government's response in March 2003 with **South Africa's economic transformation: A strategy for broad-based Black Economic Empowerment**.[107] An important statement in the policy document is that the first generation of BEE deals "provided empowerment with a high profile and brought forth a new generation of business leaders. However, there was limited

Province where three 30 year concession deals were signed to grant concessions to enterprises to develop and operate tourism businesses under specific conditions. Khoko Moya Wilderniss Trails (Pty) obtained a contract to upgrade facilities in a game reserve and to operate it over a period of 30 years. A black company held 30 per cent of the equity in Khoko and 20 per cent of overall shareholding was set aside for the local community. Then Tinswala Logde (Pty) (with a 30 per cent black partner and 25 per cent of the overall shareholding for the local community) obtained the concession to redesign and operate infrastructure and facilities in another game reserve in the Limpopo Province. The total revenue expected was R9 million over a period of ten years. A similar agreement was signed with Pungwe Game Lodge (Pty) Ltd for a re-design, building and operating contract on Pungwe Camp, also a game reserve in Limpopo Province.

105 J Cargill, "Empowerment Overview", in Business Map. **Empowerment 2002**, p. 1.

106 South African Reserve Bank, **Quarterly Bulletin of Statistics**, December 2002, p. 28.

107 Prepared by the Department of Trade and Industry, Pretoria, March 2003.

success in bringing about a substantial increase in the number of black people owning, controlling and managing significant and important parts of the economy (such as manufacturing). This has to be taken into account in the more focussed strategy and the provision of more innovative funding mechanisms. Further, the current phase of globalisation tends to exacerbate the marginalisation of those who lack assets, skills and access to markets. Government strategy for broad-based economic empowerment looks beyond the redress of past imbalances to situating BEE as a powerful tool to broaden the country's economic base and accelerate growth, job creation and poverty eradication." [108]

Table 3: Foreign Direct Investment (net current US$ million), 1970 -2000

	Nigeria	Growth rate* %	South Africa	Growth rate * %	Africa	Growth Rate * %
1970	205		318		-	
1975	417,7	19,4	634	18,8	739	
1980	739	15,3	765	4,8	784	1,5
1985	345	-17,3	496,8	-10,2	1 176	10,7
1990	602	14,9	4 660	75	1 060	-2,5
1995	677	2,9	1 256	-27,9	2 339	21,8
2000	1 374	19,3	355	-27	9 222	40,9
1970 – 1980 *		15,1		10,1		
1980 – 1990 *		-2,2		22,9		3,4
1990 – 2000 *		9,5		-24,6		26,8

Source: McGregor BFA Data System : African Development Bank, (www mcgbfa.com)
* Annual compound growth.

Table 3 above reflects an erratic and declining trend in Foreign Direct Investment (FDI) in Nigeria and South Africa since 1970 and South Africa more so since 1990. Since 1999 net portfolio investments to South Africa, dropped from R52 346 billion to –R13 835 in 2000 and –R67 626 billion in 2001.[109] Important though, is that historically, FDI has been targeted at supplying both final and intermediate goods to industrial countries and therefore tended to contract during downturns in industrial countries and expand during upturns. Since the mid-1990s, however, the growth in FDI flows reflected 'investor' interest in securing access to large markets for final goods, and has been linked to privatisation and merger acquisitions. Consequently, FDI flows have been directed at fewer countries. This was illustrated when the take-over of a leading mining company in South Africa (in 2001)

108 **Ibid**., p. 11.
109 South African Reserve Bank, p. 584.

exceeded the rise in aggregate FDI flows to emerging markets.[110] The South African government thus has to consider the global economic environment, especially trends in FDI, when formulating BEE policy. In the **Broad-based Strategy** government stated that in financing BEE, it would be vital to maintain macro-economic balance and increase the growth rate: " We need to ensure that the rate of investment rises. This means that we have to remain attractive to domestic and international investors." [111] Government seems less rigid on the prescriptive targets and recommendations of the BEEC.

Considering the BEE progress since 1999, the situation by the end of 2002 was as follows:

- No accurate figures exist for total black ownership of the South African economy.
- In February 2000 the value of market capitalisation of black-owned firms on the JSE was R61 billion, or 3,8 per cent of JSE market capitalisation. In February 2001 it rose to 4,8 per cent, (R84 billion), in 2002 it slumped to 2,2 per cent (R38 billion) and by December 2002 rose to R44 billion or 3 per cent of JSE market capitalisation.
- The number of BEE transactions declined since 1999, when the value of 45 empowerment deals (acquisitions and joint ventures) was approximately R3,4 billion ($425 million). In 2000 deals dropped to the lowest level since 1996 at R2,5 billion ($312 million) In 2001 the value of BEE deals increased to R3,836 billion, as a result of the use of state power. In 2002 the number of deals rose again to approximately 62, with a value of R8,2 billion.[112]
- The nature of BEE sectoral participation started changing by 2001/2. In 2001 most of the BEE deals were transacted in the mining sector, because government tabled **The Minerals and Petroleum Resources Development Bill**, which threatened to punish existing dormant mineral rights holders by targeting them for empowerment purposes. In 1999 BEE was prominent in oil and energy (in excess of R1 billion), then in financial services, IT and telecommunications, food and beverages and at the bottom end in industrial and paper and packaging.[113] In 2000 BEE companies were best represented in the mining sector due to three empowerment companies purchase of equity in gold, coal and platinum mines. The deals amounted to R2,525 billion.[114] This

110 Bank for International Settlements, **72nd Annual Report, 1 April 2001-31 March 2002**, p. 40.
111 Department of Trade and Industry, **South Africa's economic transformation: A strategy for broad-based Black Economic Empowerment**, par. 3.6.3, p. 17.
112 Business Map, Empowerment 2000. New directions, pp. 13-5; Empowerment 2001, better outcomes, pp. 12-5; Empowerment 2002, The State steps in, pp. 4-5; Empowerment 2003, State and market initiatives gain momentum, pp. 5-8.
113 Business Map, **Empowerment 2000, New directions**, pp. 14-5.
114 Business Map, **Empowerment 2001, Better** outcomes, pp. 14-5, 75, 76.

> changed in 2002 when MTN (Mobile Technology Network - a cellular network provider) executive directors bought a 18,7 per cent stake in MTN. Consequently 2 500 permanent staff members of MTN (of which about 70 per cent are HDIs) obtained a direct 18,7 per cent stake in their own company.[115] IT and the communications sector were afterwards the sectors with the largest BEE exposure, the mining sector second, investment third followed by engineering and pharmaceuticals.

By 2002 the state became involved pro-actively through legislation, the application of empowerment criteria in government expenditure and the publication of an official policy document, **The strategy for broad-based Black Economic Empowerment**. The process is fundamentally different from the Nigerian experience in that government did not buy up strategic enterprises or attempt to gain control over certain sectors of the South African economy. Government is slow in implementing privatisation, but exerts pressure towards the design of sectoral BEE charters. At the same time government expresses its desire to implement BEE in partnership with the private sector. "Sector- and enterprise-based charters are one form that such partnerships could take. Such charters would need to include specific mechanisms to achieve BEE objectives in that sector or enterprise in a comprehensive and appropriate manner, as well as provide measurement indicators and targets." [116] Government is now moving towards the application of a 'balanced score-card' to measure empowerment by enterprise and sector. This score-card will measure three core elements of BEE :

- "Direct empowerment through ownership and control of enterprises and assets,
- Human resource development and employment equity,
- Indirect empowerment through preferential procurement and enterprise development."[117]

Currently BEE is perceived to be part of the country's 'growth strategy' and as such should not include expropriation, nationalisation of assets or rigid timetables for the transfer of ownership. The collaborative and consultative nature of the implementation of broad-based BEE, could set the programme in South Africa apart from the general trend in African states.

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115 Business Map, **Empowerment 2003, State and market initiatives gain momentum**, pp. 66-8.
116 Department of Trade and Industry, p. 16.
117 **Ibid**., p. 14.

2. CONCLUSION

The positive aspect of BEE thus far, was that it was not initiated by forceful government policies. When it was private-sector driven, the transfer of ownership to black-controlled companies was slow, but according to the ability of the economy to finance such transactions. A negative dimension emerged when government intervened by determining ratios of black ownership. In terms of the broad goal of empowerment of the black people of South Africa, similar to the experience in Nigeria, it was the business élite in South Africa and the business élite and government in Nigeria that benefited from the transfer of ownership - not the broad community. In Nigeria the banking sector was one of the first to be taken over by government to ensure that the transfer of ownership would be financed by the state/banking sector. In South Africa BEE was privately financed, which soon created problems, because those companies developed a debt base rather than an asset base. Negotiations on a 'banking charter' have just been concluded - "it will probably be some time before an empowerment group takes on a large shareholding in one of the big four banks", because "…managements fear that foreign shareholders in particular might take flight if there are suggestions that the value of their investments might be eroded through BEE".[118] BEE companies have bought into the financial services sector right from the start, but not yet the banking sector.

In both case studies the transfer of ownership in the industrial sector was slow. Lubeck observed that none of the African states in the post-independence era succeeded in "advancing the technical level of capital accumulation in industry and agriculture".[119] This might be because of the high capital outlay for technological advanced capital goods in industry and the lack of expertise to replace existing industrial entrepreneurs. In South Africa the BEE targeting of the resources sector links to the industrial sector. It is interesting that the industrial subsidiary of the mining conglomerate Anglo American Corporation, Johnnic, was acquired by NAIL in collaboration with another empowerment consortium, NEC, in 1996.[120] After five years Johnnic was very different from the industrial conglomerate the NEC acquired in 1996 - today it is a focussed media and communications company and owner of the largest mobile telecommunications company. Johnnic sold off its industrial interests. The industrial sector is still effectively outside 'empowerment'.

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118 Edward West, "Black empowerment gathers pace in financial sector", **Business Report**, 1 May 2003.

119 Lubeck, p. 5.

120 **Business Day,** "A new colossus is emerging", 18 May 1998, p. 13; **Financial Mail**, "Hammering their way to the top", pp. 32-4.

The Nigerian 'indigenisation' strategy was abandoned. Vision 2010 expresses the desire to participate in the global market-orientated economic environment and attract private domestic and foreign investment. The South African strategy differed from that of Nigeria: the distinction was the collaborative approach to empowerment, where foreigners or 'aliens' were not driven out of the economy by means of timetables, but attempts were made to sustain confidence and co-operation from within the South African business sector. This approach was apt, since the South African business sector initiated and facilitated the take-off of BEE in South Africa.