



THE ICT CHARTER

THIRD WORKING DRAFT

10 MAY 2004

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PREFACE

INTRODUCTORY REMARKS BY CHAIRPERSON OF THE ICT EMPOWERMENT CHARTER WORKING GROUP (ICTWG)

It is often said that the longest journey begins with one small step. I am proud to say that the Working Group has already made several strides in ensuring that we in the ICT sector will boast a transformation blueprint acceptable to the widest audience including all of our stakeholders, the government, the broader South African population irrespective of race, colour, gender, class or creed, and the investment community for this country.

However, merely from the above list of constituencies one can appreciate the delicate job of balancing their separate interests in fashioning any economic strategy. The enormity of a task has never been an insurmountable obstacle to South Africans. The uniqueness of our situation has always only been a catalyst for the creativity and elegances of our solutions.

The government's Broad-based Black Economic Empowerment strategy is a typical example of this. It is neither totally voluntary nor completely prescriptive. It provides no punitive sanctions for non-compliance, with the only punishment being self imposed and curable economic demise for "offenders".

It is against this background that the task of the Working Group is unenviably complex and yet exciting. We have repeatedly stated that our guiding principle in this process is INCLUSIVENESS. Everything else we do is subservient to this principle. When deadlocks arise, as sure they will, the Working Group has formally adopted the notion of "sufficient consensus" borrowed from our founding mothers and fathers who once gathered for days, weeks, months and years in Kempton Park to design the specifics of our collective freedom.

This *Third* Working Draft like the first and second, forms part of a deliberately protracted process which was publicly launched on 25 June 2003 following extensive behind-the scenes talks among the key industry associations in the ICT sector. On the 16th and 17th September 2003, some 600 delegates representing a cross-section of our sector and population gathered for two days at the Sandton Convention Centre and set the tone for the current co-operative spirit prevalent in this effort.

On 16 February 2004, a mini-summit sponsored by Dell was held at Eskom Convention and opened by the Minister of Communications where delegates focused their attention on the wider community issues of bridging the digital divide and Corporate Social Investment, specifically on how these items should be accommodated in a broad-based ICT BEE Charter.

Some of the creative proposals offered from the floor went beyond the wildest expectations of the conveners of these gatherings. Parallel to these, inputs have been received from various interest groups representing industry associations, individuals, multinationals, state-owned enterprises, individual companies of all shapes and sizes, conference goers, etc.

Following the public launch of the *First Working Draft* on 09 March 2004, the Working Group undertook an extensive national road-show which covered all eight provinces outside Gauteng. This was partly in response to the concerns raised with us that the process risked being viewed as a Johannesburg or Gauteng initiative. More importantly the national road-show, sponsored by SAP, SITA and Multichoice was in keeping with the broad consultative culture of the ICT charter process.

Road-show meetings were held on the following dates:

PROVINCE	DATE
Eastern Cape (East London and Port Elizabeth)	15 March
Western Cape (Cape Town)	16 March
Northern Cape (Kimberley)	24 March
Free State (Bloemfontein)	24 March
KwaZulu Natal (Durban)	26 March
Limpopo (Polokwane)	05 April
North West (Mafikeng)	05 April
Mpumalanga (Nelspruit)	06 April

The average attendance at the road-shows was 100 invites with Cape Town and Mpumalanga having the highest attendance, well above the average and Kimberley and Mafikeng lower than the average.

It is no understatement to say that the enthusiasm and energy shown by the participants at the road-shows was a revelation to us. From the comments received, the provincial constituencies deeply appreciated the idea of seeking their inputs in their own back yards.

I wish to thank the hundreds of people who at relatively short notice made sure that these road-shows were a huge success. Specific thanks must go to the volunteers in the Task Team who gave up their time (and that of their employers) to travel to all four corners of this country to spread the word of transformation.

This *Third* draft contains most of the inputs received at the road-shows. In addition, industry associations were given a deadline of 30 April to submit their final comments on the Second Working Draft. Also at each provincial road-show a Contact Group mostly made up of volunteers, was appointed. One of their mandates was to conduct follow-up provincial discussions. Inputs from these were also required to be submitted before the 30 April deadline.

This draft which takes all of the above into account is being released today, four days before a **1-day stakeholders Indaba which will be held on Friday 14 May 2004** at Vodaworld.

This Indaba is specifically called to discuss the contents of this draft. A few hundred delegates are expected, representing industry associations, the provincial committees and some of the key players in the ICT sector. We will once again have representatives of the Department of Communications, the Department of Trade and Industry and other relevant government representatives. Our new deputy Minister of Communications, Honourable Roy Padayachee will be introduced to delegates who have promised him a warm welcome to the sector! We extend our congratulations to Honourable Minister Matsepe-Casaburri on her reappointment to lead a transforming ICT sector into the next decade of democracy.

A decision has been taken to close submissions on 24 May 2004.

In the ensuing four weeks or so, we hope to facilitate negotiations on any outstanding contentious issues and hopefully be in a position to release the final charter on schedule on 25 June 2004 or as soon thereafter as circumstances will dictate.

Many thanks must go to our sector companies who generously sponsored this process namely, Vodacom, Telkom, SAP, HP, IBM, Microsoft, Dell, CSC, Arivia.com (all Platinum), Oracle (Gold), Altron and T-systems (Silver) as well as MTN and Didata (Bronze). Additional specialised sponsorship was received from CompTIA, Pearson VUE and Torque-IT.

In addition the Working Group decided to form an internal Research Team with some full time staff and volunteers and this is headed up by Tebogo Khaas, CE of Digital IQ (Pty) Ltd. A special word of gratitude must go to HP who have availed office space and other infrastructure for our Research Unit at their Head Office in Rivonia. The unit is augmented by the services of two independent agencies, Empowerdex and Forge Ahead whose valuable input has been procured at give-away minimum charges. We thank them immeasurably.

Finally, I would also wish to once more again thank SAP, Multichoice Africa and the State Information Technology Agency (SITA) who all have generously contributed to the funding of the road-show. Baie dankie, re a le boga.

These numerous processes are ALL aimed at feeding into a final document which is still projected for finalization not later than 25 June 2004 being the anniversary of our first public announcement of the process.

The monthly drafts are aimed at teasing further discussions on the charter in a more structured way. The intention is definitely not to circumscribe the areas of discussion. On the contrary, any issues left out need to be brought to our attention. The first and second drafts seek to ask more questions than provide answers. It is anticipated that the Third Working Draft will start to provide some of the answers.

We undertake to issue further updates or drafts until completion. The quality of these further drafts will be directly dependent on feedback received primarily from the industry associations, the road-shows and the Research Unit. Anybody else is welcomed to participate via our website at www.ictcharter.org.za.

Let me mention that the decision to publish this series of drafts was not taken lightly or without considering the inherent dangers thereof. However, the argument for transparency and allowing for maximum participation won the day. The compromise

reached was to exclude numerical targets at this stage since it is these that are likely to distract attention from the principles and other important aspects of the charter.

Despite this, we made a call for debate and recommendations on targets (for example, targets relating to women) and their relative weighting must continue alongside the articulation of principle or policy position. Judging by the quality of submissions received, we remain convinced that this was the correct position to adopt although we acknowledged that it was not universally popular.

The time has now come for us to unveil our analysis of the recommendations relating to the scorecard and targets. The new sections constitute our summary of the various input received from a wide array of the stakeholders defined above.

In discussing this document special consideration must be given to the provisions of section 9(4) of the Broad-based BEE Act 53 of 2003 which reads:

"In order to promote the achievement of equality of women as provided for in section 9(2) of the Constitution of the Republic of South Africa, any targets..... may distinguish between black men and black women.."

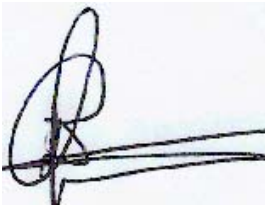
A third and important aspect of the charter obviously relates to the post-adoption implementation phase of the charter. We urge discussants to give some serious thought to this issue. After all, the implementation phase is likely to go into the next decade and will therefore span a longer period than the policy formulation stage.

Moreover, the work of economical transformation will never be "finished" in our lifetime. Continuous revision and improvement of our socio-economic strategies is an inherent part of our evolving new country.

Finally, it remains for me once again, on behalf of the Working Group, to thank all those who have directly and indirectly volunteered their time to this rather daunting but important historical process.

Let all of us in unison repeat our guiding cry: "Hamba Digital Divide! Woza Transformation!"

Thank you

A handwritten signature in black ink, appearing to be 'Dali Mpofo', written over a light blue background.

DALI MPOFU
CHAIRPERSON: ICT EMPOWERMENT CHARTER WORKING GROUP
10 May 2004

CHAPTER 1

We, the parties to this Charter, do hereby seek to establish a self-regulatory framework for the promotion of transformation in the Information Communications Technology (ICT) sector; to establish guidelines for Broad-based Black Economic Empowerment (BBEE) and a scorecard on empowerment for the ICT industry; to establish an ICT BEE Council as the body tasked with implementing, monitoring and enforcing the objectives of the Charter; and to provide for matters connected therewith.

PREAMBLE

WHEREAS under the previous system of *Apartheid*, a plethora of Acts was introduced with the sole objective of denying black people, including black women, access to and control of South Africa's productive resources and skills based purely on race and gender considerations;

AND WHEREAS a decade after the demise of the system of *Apartheid*, and in spite of a broad range of policy and legislative instruments introduced by the new democratic government aimed at redressing the imbalances of the past, the vast majority of South Africans are still excluded from ownership and control of productive assets and the possession of strategic skills to the detriment of economic development, employment creation and poverty eradication;

AND WHEREAS growth and prosperity in South Africa's economy is not being realised to its full potential due to the lack of meaningful participation by the vast majority of black South Africans, including black women, in the national economy, and particularly in the ICT sector;

AND WHEREAS unless corrective measures are taken to mitigate the inequities of *Apartheid*, sustained economic growth, social stability and prosperity in the economy as well as human development will be severely undermined to the detriment of all South Africans, both black and white; **AND**

IN ORDER TO –

- advance economic transformation in the ICT sector;
- provide an enabling environment for transparency, fairness and consistency when adjudicating on matters related to BEE in the ICT sector;
- promote and support the objectives of the Broad-Based Black Economic Empowerment Act 53 of 2003;
- bridge the "*digital divide*" in our society by actively promoting access to ICTs and supporting skills development and training initiatives in the ICT sector;
- stimulate and support growth in the ICT sector and contribute towards the reduction in the high unemployment rate and the alleviation of poverty; and
- foster equity and moderate economic expectations of all South Africans occasioned by the changed political landscape.

WHEREFORE, we the parties to this Charter commit ourselves to actively promoting the objectives of Black Economic Empowerment in the ICT sector and to ensure its effective implementation in the industries we represent.

CHAPTER 2

DEFINITIONS

Definitions, Meanings & Interpretations

In this document, unless the context indicates otherwise, words purporting the singular shall also refer to the plural; words purporting one gender shall also refer to the other gender.

The following words used in this document shall have the following meaning: -

- 2.1. "Affirmative Procurement" or "Preferential Procurement" means the specific procurement policies that aim to include:— contracting with persons or categories of persons historically disadvantaged, by unfair discrimination on the basis of race, gender or disability, among other things;
- 2.2. "BEE" as defined in the DTI's Broad-based Strategy document refers to an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people that manage, own and control the country's economy, as well as significant decreases in economic inequalities;
- 2.3. "BEE accredited" means being validated in terms of this charter as a BEE company, or being validated as having achieved a minimum standard of BEE contribution in terms of a recognised BEE charter scorecard or another standard recognised by the ICT BEE Council;
- 2.4. "Black Engendered Enterprise" means an enterprise with at least 25% representation of black women within the black equity and / or management portion.
- 2.5. "Black people" or "blacks" are generic terms which mean Africans, Coloureds and Indians who are citizens of South Africa and were legally denied the right to vote prior to the operation of the interim constitution of 1993 and the South African Constitutional Act of 1983;
- 2.6. "Black-owned enterprise" means one that is at least 50,1% owned by black persons and where there is commensurate management control by black persons.
- 2.7. "Black-empowered enterprise" means one that is at least 25.1% owned by black persons and where there is at least 25% management control by black persons.
- 2.8. "Broad-based black economic empowerment" means the economic empowerment of all black people, including black women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies; that include, but are not limited to: -

- 2.8.1. increasing the number of black people that manage, own and control enterprises and productive assets;
 - 2.8.2. facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises; -
 - 2.8.3. human resource and skills development;
 - 2.8.4. achieving equitable representation in all occupational categories and levels in the workforce;
 - 2.8.5. preferential procurement;
 - 2.8.6. investment in enterprises that are owned or managed by black people.
- 2.9. "Community or broad-based enterprise" has an empowerment shareholder who represents a broad base of members such as a local community or where the benefits support a target group, for example black women, people living with disabilities, the youth and workers. Shares are held via direct equity, non-profit organisations and trusts.
- 2.10. "Company" or "Enterprise" means a legal entity registered in accordance with the laws of the Republic of South Africa for the purposes of conducting business and shall include partnerships and sole proprietors;
- 2.11. "Control" means the right or the ability to direct or otherwise control the majority of the votes attaching to the shareholders' issued shares, the right or ability to appoint or remove directors holding a majority of voting rights at meetings of the board of directors, as well as the right to control the management of the enterprise;
- 2.12. "Council" or "ICT BEE Council" means the ICT Black Economic Empowerment Council envisaged in Chapter 7 of this Charter;
- 2.13. "Digital Divide" refers to the disparity between those who use and have access to ICTs and those who do not, and is characterised by a lack of meaningful access to ICTs between racial groups, lack of basic literacy, and encompasses the provisioning of computers, internet connections and includes physical, digital, human and social resources and relationships.
- 2.14. "Direct ownership" means ownership of an equity interest together with control over voting rights attaching to that equity interest;
- 2.15. "Discrimination" means discrimination as defined in the Promotion of Equality and Prevention of Unfair Discrimination Act (2000) means any act or omission, including a policy, law, rule, practice, condition or situation which directly:
- 2.15.1. imposes burdens, obligations or disadvantages; or
 - 2.15.2. withholds benefits, opportunities or advantages from, any person on one or more prohibited grounds
- 2.16. "Effective date" means the date on which the ICT Charter will become operational and binding on all sector stakeholders;
- 2.17. "Employment Equity" as defined in the Employment Equity Act (1998) means to promote equal opportunity, and fair treatment in employment through the elimination of unfair discrimination; and implementation of affirmative action measures to redress the

disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce;

- 2.18. "Enterprise Development" means investment in, and / or development of and/or joint ventures with black owned or black empowered enterprises and SMMEs, with real economic benefit flowing to the recipient enterprise allowing it to be set up and run on a sustainable basis;
- 2.19. "Equity Equivalents", as defined by some multinationals, means alternative forms of investment in BEE in lieu of selling equity shareholding in a multinational company;
- 2.20. "Executive management" means those managers who have a significant leadership role in the enterprises, have control over day to day operations, have decision making powers and report directly to the Chief Executive Officer and / or equivalent or the board of directors;
- 2.21. "Financial sector" means all classes of financial institutions including banks, long term insurers, short term insurers, re-insurers, managers formal collective investment schemes in securities, investment managers and other entities that manage funds on behalf of the public and entities listed as part of the financial index of a licensed exchange and as envisaged by the Financial Sector Charter.
- 2.22. "Fronting" means the common practice whereby black people or women are placed in ownership or management positions or alternatively created structures that give the false impression of ownership and/or control by said black people.
- 2.23. "GDP" means Gross Domestic Product and refers to the market value of all final goods and services being produced within the borders of a country;
- 2.24. "ICASA" means the Independent Communications Authority of South Africa established in terms of the ICASA Act No.13 of 2000 to regulate telecommunications and broadcasting in South Africa;
- 2.25. "ICT" means Information and Communication Technology and refers to a combination of manufacturing and services industries that capture, transmit and display data and information electronically (OECD 2002: 18; SAITIS 200: 3);
- 2.26. "Indirect ownership" occurs when an institution or other investor owns equity in a company on behalf of beneficiaries and where there may not be direct participation by beneficiaries in the voting rights. (For the purposes of this Charter, this definition shall not include ESOPS and Community Share Retail Schemes approved by the ICT BEE Council;
- 2.27. "ISETT SETA" refers to the Information Systems, Electronics and Telecommunication Technologies SETA;

- 2.28. "Junior Management" means the level of management below middle management and includes academically qualified workers who possess technical knowledge and experience in their chosen field;
- 2.29. "Long-term" means 31 December 2014 by which date compliance on all the minimum requirements of the Charter is mandatory;
- 2.30. "MAPPP SETA" refers to the Media, Advertising, Publishing, Printing and Packaging SETA;
- 2.31. "Middle Management" means the level of management below senior management and includes people who possess a high level of professional knowledge and experience in their chosen field;
- 2.32. "Mid-term" means 31 December 2009;
- 2.33. "NGO" means an organisation which is independent from government and its policies. Generally, although not always, this is a non-profit organisation that gains at least a significant proportion of its funding from private sources;
- 2.34. "Ownership" means ownership of an equity interest together with control over all of the voting rights attaching to that equity interest. This excludes any share options not yet exercised;
- 2.35. "Procurement" means all expenditure to acquire goods and / or services including capital expenditure, but excluding procurement spending where there is a natural monopoly, where there is no local supplier or procurement of items of procurement where the supplier is imposed in terms of a global policy for technical (but specifically not commercial) reasons, or inter-entity charges for services rendered by other members of the group, or expenditure classes covered elsewhere in the charter e.g. salaries and wages;
- 2.36. "Residual" means that portion of a sector's scorecard which allows each sector to tailor the scorecard to their individual circumstances;
- 2.37. "Senior Management" means people who plan, direct and co-ordinate the activities of a business/organization and who have the authority to hire, discipline and dismiss employees;
- 2.38. "SETA" means a sector education and training authority established in terms of section 9 (1) of the Skills Development Act 97 of 1998;
- 2.39. "Skills Development" means the process of enhancing individuals' specialised capabilities in order to provide them with career advancement opportunities;
- 2.40. "SMME" means a small, medium or micro enterprise as defined in the National Small Business Act 102 of 1996;
- 2.41. "SOE" or "state owned enterprises" is an enterprise, often a corporation, owned by government;
- 2.42. "USA" means the Universal Services Agency as established in terms of the Telecommunications Act (1996), as amended.

CHAPTER 3

OVERVIEW

EXECUTIVE SUMMARY

3.1. Introduction

South Africa has the largest ICT sector in Africa based on indicators such as technological capacity, investment and turnover. The country has always been an early adopter of ICTs, beginning with the telegraph and telephone in the 19th century, and continuing with radio broadcasting and later Information Technology through the computer era of the 20th century.

The ICT sector is made up of the following main sub-sectors:- Information Technology, Telecommunications, Electronics and Broadcasting (including certain aspects of the Advertising industry). The sector has been recognised by government as being of strategic importance to the future growth and prosperity of South Africa's economy. It is for this reason that most of the government's socio-economic initiatives, such as poverty alleviation, grant administration, education & training and national healthcare system, depend on the availability of a sound national ICT infrastructure.

Despite its infancy, the ICT sector is ranked amongst the top 5 sectors in terms of its contribution to the GDP of South Africa.

3.2. Historical & Political Perspective

The system of *Apartheid* confined the vast majority of black South Africans to the periphery of economic activity by structurally inhibiting their meaningful participation in the economy. A plethora of past colonial and *Apartheid* laws was systematically enacted from 1910 with the direct intention to disempower blacks of land and their right of ownership to the economic resources of the country. Other subsequent laws also ensured that blacks were excluded from obtaining certain skills, especially technical and science-based skills. In fact, certain laws ensured that black education was generally inferior compared to non-black education. The Apartheid government differentiated education spend based on race. The following table clearly illustrates the

disparities in the racist Apartheid government spending in education as recently as 1988:

RACE	PER CAPITAL SPEND PER CHILD	MATRIC PASS RATE	PUPIL TO TEACHER RATIO
White	R2,769	98%	16,0: 1
Indian	R2,015	95%	22,5: 1
Coloured	R1,508	68%	25,4: 1
African	R595	57%	41,2: 1

Source: Ministry of Education

Successive *Apartheid* governments in the last century premised their electoral longevity on openly declared race-based economic policies that excluded blacks in general, and Africans in particular. This only served to prejudice the future economic prosperity of all South Africans.

The challenge of economic transformation has been, for the past ten years, and will for some time remain, the main challenge for the new democratic state. Much needed poverty alleviation, job creation and skills development cannot take place on the required scale without a vigorous programme of broad-based black economic empowerment.

Ten years after the demise of the *Apartheid* system, various efforts at advancing BEE have been fraught with unfortunate business practices such as *fronting* and unsustainable ownership models. The effects of current BEE programmes on the South African social and economic fabric have been relatively stunted by *ad-hoc* and inconsistent application resulting from non-uniform rules even by different government departments and state owned enterprises. This situation begged for a serious effort to bring about harmony and uniformity. This has now finally been brought about by the recent promulgation of the Broad-based BEE Act 53 of 2003.

3.3. Legislative Framework

In order to address the imbalances brought about by the economic legacy of *Apartheid*, it became imperative for the new democratic government to embark on policies to deal with the systematic discrimination in the economic, social and political fabric of the country. To this end government has passed various pieces of legislation, including the: -

- **Employment Equity Act 55 of 1998**

The objective of this Act is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination as well as to implement affirmative action measures to redress the disadvantages in employment experienced by designated groups.
- **Skills Development Act 97 of 1998**

The objective of this Act is to provide for a coherent framework for workplace strategies that develop and improve the skills base of the country while being responsive to the needs of the particular workplace. The Act established SETA's and a national skills fund.
- **Skills Development Levies Act 9 of 1999**

This Act obliges employers to contribute 1% of payroll per annum to the National Skills Fund. The monies can be claimed back by employers who are able to demonstrate that they have developed skills and trained employees. Monies remaining are spent on strategic training and development projects which are identified as being in the national interest.
- **Preferential Procurement Policy Framework Act 5 of 2000**

Section 217 of the Constitution requires organs of state in the national, provincial or local sphere of government, or any other institution identified in national legislation who contract for goods or services, to do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective. The section expressly allows for such organs of state to implement a procurement policy that provides for categories of preference in the allocation of contracts and the protection or advancement of persons or categories of persons, disadvantaged by unfair discrimination. The only requirement is that national legislation must prescribe a framework within which such a policy may be implemented. Government has given effect to the latter by enacting the Preferential Procurement Policy Framework Act.

- **Broad-based Black Economic Empowerment Act 53 of 2003**

The objectives of this Act are to facilitate broad-based black economic empowerment by, amongst others, promoting economic transformation in order to enable meaningful participation of black people in the economy.

- **Regulated Sub-sectors**

Empowerment is one of the primary objects of legislation governing the regulated ICT sub-sectors. These usually take the form of encouraging ownership and control of licensed services by persons from historically disadvantaged groups, especially those promoting the empowerment and advancement of women, and encouraging the development of human resources and training especially amongst disadvantaged groups. This legislation includes the Broadcasting Act 4 of 1999 as amended, the Independent Broadcasting Act 153 of 1993, the Telecommunications Act 103 of 1996, as amended, and the Electronic and Communications Transactions (ECT) Act 25 of 2002 and the recently published Convergence Bill. ICASA has given effect to these objectives by specifying conditions relating to empowerment in licences issued under the new dispensation. Empowerment has also been a critical component in the awarding of any new licences.

Section 35 (3) and (4) of Telecommunications Act, as amended, obliges ICASA to give due regard to applications received from historically disadvantaged groups and especially those that promote the empowerment and advancement of women in the telecommunications industry. ICASA must give preference in the award of any telecommunications licence to persons or an entity with equity ownership of up to thirty percent (30%) or such higher equity ownership percentage as may be prescribed.

On the 16 January 2003 ICASA published regulations concerning the limitation on ownership and control of telecommunications services. The regulations define black people and require telecommunications licensees to maintain

records of ownership and control interests held by historically disadvantaged persons in a license (not applicable to licensees trading on the JSE or any other internationally recognised securities exchange). The requirement only applies to the first two years of the licence. In addition licensees must annually file by 31 January of each year, an ownership report for the preceding calendar year.

The regulations further provide that a licensee is required to obtain prior written approval from ICASA where there is a proposed decrease in ownership interests held by black people in a licensee within the first two years of the initial grant of a licence where the licensee proposed such ownership interests to be held by black people in its application for a licence in response to an invitation to a tender issued by the Minister under s34 of the Act. This regulation does not apply to the issued share capital of a licensee trading in the JSE or other internationally recognised securities exchange where the trading of such issued share capital would not result in any change of a control interest in a licensee; the transfer of any ownership or control interest where the market is not a concentrated market; the transfer of any ownership interest held by the Government of the RSA (or any agency, instrumentality or political division thereof) acting in its capacity as a shareholder; or the transfer of ownership interests where the transfer does not result in a transfer of a control interest.

ICASA on the 01 October 2003 published regulations applicable to Value Added Network Services (VANS). The regulations provide that where a person applies for a VANS licence, the application must contain the employment strategies related to black people and have a minimum of 15% shareholding by black people. In the case of deemed VANS operators the minimum 15 % shareholding would only have to be met within 24 months of the promulgation of these regulations.

The Minister of Communications published policy directions in August 2001 which were amended on 26 April 2002. The Minister directed ICASA to make regulations for all operators in the telecommunications sector concerning their contributions to the economic empowerment of persons from historically disadvantaged groups, including women and to formulate licence conditions concerning operators contributions towards the economic empowerment of persons from historically disadvantaged groups including women.

The Minister of Communications has also placed obligations on government itself in legislation such as the ECT Act. Government must develop a national e-strategy and in doing so must provide for ways of maximising the benefits of electronic transactions to historically disadvantaged persons and communities.

The Competition Act 89 of 1998 mandates the Competition Commission to consider empowerment in various instances. Generally, the Commission is mandated to promote a greater spread of ownership, in particular to increase ownership by historically disadvantaged persons. Parties may apply for an exemption from an agreement or practice that would otherwise constitute a prohibited practice if it promotes the competitiveness of small business or firms controlled or owned by historically disadvantaged persons. Similarly, in a merger, the commission must take into consideration any public interest issues which include the ability of small and black business to become competitive.

3.4. The Charter Process

The ICT Sector Charter is preceded by other industry charters, including the Mining & Financial Sector Charters. In the case of the Mining Charter, the process was initiated and driven by the Department of Minerals & Energy. When it came to subsequent charters such as the Financial Sector Charter, the government took the view that the respective industry stakeholders take the lead before any direct government involvement or intervention.

This ICT Charter is a result of an extensive consultative process within the ICT sector, through industry associations, as well as with government and numerous other relevant stakeholders. The process started when government, in line with what is stated above, challenged the ICT sector to take the lead in the formulation of its own sectoral Charter.

The process itself was organic, starting with a handful of industry associations with additional organisations joining before and after the Indaba held at the Sandton Convention Centre on the 16th & 17th September 2003. This was as a result of a deliberate attempt to make the process as inclusive as possible and to ensure that all the organisations in the ICT sector would be represented and contribute to the development of an ICT Charter. On the 16th February 2004, a stakeholders' mini-summit on Corporate Social Investment was held in Midrand to address issues related to *"bridging the digital divide"*. Further, a series of workshops, mini-summits and "road-shows" were held in major cities and towns in all the nine provinces of South Africa.

The process was deliberately conceived to be protracted so as to allow inclusion of any possible players who may still be outside or feel excluded.

3.5. Challenges Facing the ICT sector

The challenge facing the South African ICT sector and government involves a delicate balancing act of stimulating sustainable national economic growth, on the one hand, and fulfilling the national imperatives of economic transformation, on the other.

The main challenges facing the ICT sector have been identified, amongst others; as: -

- 3.5.1. participation by blacks in areas such as equity ownership, management and skills development which was limited due to their systematic exclusion through the policies of Apartheid;
- 3.5.2. lack of co-ordination of initiatives aimed at addressing key issues such as skills shortages in certain areas;
- 3.5.3. the industry is highly fragmented with a multitude of associations each representing different parts of the ICT value chain but with considerable overlap and duplication. For this reason, many

companies and professionals concurrently belong to more than one association;

- 3.5.4. detailed and reliable research on various key aspects of the ICT sector does not yet exist or is not readily available. In many instances, NGO's and other state organs have duplicated research with the unintended consequence that some important parts of the research are either incomplete or conflict with each other; and
- 3.5.5. the development of Open Source platforms and other measures aimed at enhancing local technology and intellectual property capacity thus lessening reliance on proprietary platforms in the long term.

With regard to formulating its Charter, the industry took cognisance of the interlink between itself and other processes outside the ICT sector. For example, proper implementation of the Financial Sector Charter is directly dependent on the finalisation of the ICT Charter. This owes to the fact that more than forty percent of the financial sector procurement is reportedly spent on the ICT sector. Clause 6.1 of the Financial Sector Charter reads:

"The financial institutions will implement a targeted procurement strategy to enhance BEE. Provided there are charters in the information and communication technology ("ICT"), the advertising and the automotive and building sectors, and that international suppliers are subject to those charters, the target will be 50% of the value of all procurement from BEE accredited companies by 2008 and 70% by 2014."

To varying degrees, every other sector of the economy is directly and heavily dependent on goods and services procured from the ICT sector.

3.6. Key Principles of the Charter

This Charter is based on the following underlying principles: -

- 3.6.1. its provisions generally apply to all ICT sector enterprises active in the South African market. This shall also include specialised and sizable ICT related business units outside of the ICT sector itself such as IT departments of large banks;
- 3.6.2. it is a voluntary and inclusive industry initiative;
- 3.6.3. it is a transformation Charter as contemplated in the Broad-based BEE Act 53 of 2003;

- 3.6.4. it constitutes a framework and establishes the principles upon which BEE will be implemented in the ICT sector;
- 3.6.5. it outlines processes and mechanisms used to implement economic transformation in the ICT sector; and
- 3.6.6. it is conceived on the philosophical basis that it is a “living document” meaning that it is dynamic and, for the duration of its life, will be subjected to periodic reviews which must be sensitive to inevitable evolution in the technological, economic, political and other arenas. Any future amendments, starting with this document will be effected on the supreme principles of consultation, inclusivity, transparency and non-racialism as enshrined in and symbolised by the Constitution of the Republic of South Africa.

CHAPTER 4

Objectives of the Charter

4.1. Main Objectives

The primary objectives of this Charter, in compliance with the Broad-based BEE Act, are to promote and facilitate economic empowerment in the ICT sector by doing one or more of the following: -

- 4.1.1. enable meaningful participation of blacks in the growth of the ICT sector and, by extension, in the national economy;
- 4.1.2. achieving a substantial change in the racial and gender composition of ownership, management and control structures as well as in the skilled and specialist positions of new and existing enterprises;
- 4.1.3. increasing the extent to which black women, communities, disabled persons, workers, co-operatives and the youth participate meaningfully in all areas of the sector;
- 4.1.4. facilitating access to ICTs by black people, the rural and urban poor as well as other marginalised groupings, otherwise referred to as *“bridging the digital divide”*;
- 4.1.5. providing skills development and training and thereby increasing access to, and participation in, the national economic activity of South Africa by black people; and
- 4.1.6. providing an enabling environment for transparency, fairness and consistency when measuring and adjudicating on matters related to BEE in the ICT sector.

4.2. Interpretation of the Charter

Any person applying this Charter must interpret its provisions so as to: -

- 4.3.1. give effect to its objectives;
- 4.3.2. comply with the Broad-based BEE Act 53 of 2003; and
- 4.3.3. comply with the Constitution of the Republic of South Africa.

CHAPTER 5

CORE ELEMENTS OF THE CHARTER

TRANSFORMATION INDICATORS

5.1. Equity Ownership

Overview

Black people directly own approximately 2.9%¹ (excluding Telkom SA and MTN) of all publicly listed ICT enterprises on the Johannesburg Stock Exchange (JSE). Data relating to non-listed entities is relatively more difficult to access and is still subject to ongoing research for inclusion in drafts of the ICT Charter.

Various legislation and regulations within the sector, such as the Telecommunications Act and the Broadcasting Act, address the issue of empowerment with special emphasis on equity ownership. Other ICT sub-sectors such as Electronics and Information Technology are not subjected to special regulation relating to ownership.

Objectives

The main objectives of this Charter as it pertains to this indicator are to: -

- increase the number of black people, including black women and other vulnerable groups such as those with disabilities, workers and the youth, who directly own and control ICT enterprises;
- eliminate and discourage the practice of token ownership committed by blacks and whites alike, otherwise commonly referred to as *fronting*;
- set an acceptable minimum target and where it is deemed appropriate sub-sector target for levels of shareholding held by

¹ Wu, C. Lorio, P. and Naidoo, C. , 2004, *An Analysis of the BEE Status of JSE-listed Information Technology and Electronic Sectors*, Unpublished research, Empowerdex. The analysis was based on ownership information in the IT software, IT hardware and Electronics sectors of the JSE. *(The analysis was based on JSE-listed companies in IT Software, IT Hardware and Electronic sectors as at September 2003 and exclude the media and telecommunication sub-sectors.)*

black people including black women in ICT companies operating in South Africa;

- explore the notion of collective ownership through co-operatives and other similar structures; and
- provide clarity in and a standardized definition of ownership.

Challenges

The following are some of the major challenges facing the sector in attaining the objectives described above:-

- **Access to Funding** – This is one of the major challenges facing black people wishing to acquire equity in ICT enterprises. In the previous historical dispensation, the black population in South Africa never had the opportunity to build an adequate capital base to support funding requirements. It has been submitted that where funding is available, applications for start-up finance mainly by black owned or black-controlled enterprises have been met with the inflexible requirement that prospective applicant entrepreneurs make their own financial contributions to the intended businesses. In addition and despite South Africa's relatively large venture capital market available for investment (within the continent), such funding is mostly targeted at "large" safe investments and these funds are in the control of a "risk-averse" financial system.

It has further been submitted that the requirement for black people to raise collateral in order to access these funds is an onerous one.

- **Funding Mechanisms-** In many instances, terms associated with funding mechanisms are usually restrictive, and as such, limit the economic benefits flowing to black participants.
- **Cost of Funding** – Empowerment transactions are often too expensive for the black participants seeking to conclude empowerment deals. Often these deals are viewed as too risky and attract a high finance premium. In some instances, the price of an asset under acquisition would be highly inflated or the owners regard empowerment as an easy way to cash out.
- **Empowerment Goodwill** – It has been submitted that the inclusion of black people in the equity ownership of a company

should be regarded as a valuable contribution to a new partnership. This intangible asset, embedded in every genuine BEE transaction, should be regarded as goodwill outside the traditional methods of valuation. Stakeholders are urged to consider guidelines on how to treat this type of goodwill and make provision for its consideration in mitigating funding requirements by black participants.

- **Due diligence capability** – In most cases and due to a lack of resources potential BEE partners lack the capacity to conduct a proper due diligence on the target white company and have to rely solely on their financiers or the information provided by the target company in affixing a rand value for the BEE stake. This often leads to the BEE partner paying more and being taken advantage of by unscrupulous funders and or potential “partners”.
- **Shareholder Agreements-** In some instances, shareholder agreements are also used to limit ownership and control by black participants.
- **‘Fronting’-** This practice still remains a major problem in the ICT sector and other related sectors, and should be strictly prohibited in the ICT Charter.
- **Foreign-based ICT enterprises** – Some foreign owned and controlled ICT enterprises (mainly American multinationals) submit that, due to the stringent ownership restrictions from their parent companies and the need to preserve intellectual property, amongst others, it is difficult to dilute their ownership. Instead, they propose the use of ‘equity equivalents’ in place of equity participation.
- **State Owned Enterprises (SOEs)** – It has been submitted that SOEs, when wholly owned by government, should not be regarded as BEE empowered enterprises in respect of the ownership indicator. However, if partially owned by government, the balance of the equity directly in the hands of private black investors shall determine the extent to which such an SOE is empowered. The government shareholding must be excluded for the purposes of computing BEE ownership.
- **Lack of Funding Policy Knowledge** – It has been submitted that, in some instances, some public officials entrusted with the

disbursement of funds for BEE do not have sufficient knowledge of relevant funding policies or do not possess the requisite expertise to implement such policies. This, in turn, results in funding earmarked for BEE transactions to not be allocated or used as intended.

- **Unfavourable Dividend Policies** – It has been submitted that there exists a tendency by some larger entities, mainly with management contracts in joint ventures, to implement unfavourable dividend policies, such as perpetual deferment of declaring dividends. This would then make it difficult for the black shareholders to repay their loans or debts in respect of their funding from any of the profits made in the joint venture and, in some instances, default on their loan repayments.
- **Employee Share Ownership Programmes (ESOPs)** – It is argued that most BEE equity transactions overlook black employees and only focus on individuals who mostly are external to the enterprises. ESOPs as well as other collective ownership schemes, such as empowerment trusts, need to be further explored.
- **Indirect Ownership** – Stakeholders are required to indicate whether or not indirect ownership should be taken into account when meeting the required targets for ownership. If the answer is in the affirmative, it must then be noted that the issue of indirect ownership needs to be clarified, as it is open to abuse. Some have argued that ownership by entities such as the Public Investment Commission or other pension funds should not be considered for BEE purposes. Others advance the counter argument that where such equity is held on behalf of employees in a form of vehicles such as pension funds investment companies, concomitant nominee BEE shareholding needs to be taken cognisance of for purposes of BEE. This issue is currently being debated by the industry stakeholders and will be subjected to some direct negotiation and compromise.
- **Family Owned SMMEs** – It has been submitted that family owned SMMEs pose peculiar challenges in relation to divesting of shareholding in order to meet equity targets.

- **Financial Management Education** - It is submitted that Financial management education and training be provided for SMMEs and potential entrepreneurs. It is further submitted that people in rural communities, in particular, are intimidated by their lack of knowledge and understanding of financial structuring and the attendant operational complexity related to such structures. A possible partnership or collaboration between the relevant SETA's in the ICT sector and the Bank SETA may help address this need through mechanisms such as learnerships amongst others.
- **SMMEs** - The transformation of established white owned companies into empowered companies is seen as posing a threat to the development of SMME's. Once traditionally white owned companies have taken on a BEE partner such companies are preferred to black owned SMME's. The charter must ensure the achievement of transformation in relation to this indicator does not negatively impact the development and growth of SMME's.
- **Limitations on BEE Shareholding** - The working group must address the issue where a BEE shareholder sells shares on the open market or to a non-BEE third party. What effect will such a transaction have on the balanced scorecard of that company and the points accrued as a result of the original deal.

Recommendations

Funding

- State organizations like Ntsika, Khula, the Eastern Cape Development Corporation and others should fund/finance the development of BEE enterprises as opposed to just giving guarantees. The procedures/processes of acquiring these finances should be made favorable for black entrepreneurs. In addition the visibility of these organizations needs to be improved by mass advertising campaigns and a presence in mainly black areas.
- While funding is a problem, so too is the criteria for funding (i.e. traditional banking criteria such as balance sheet strength) and public servants who control the funding who may not be qualified to analyse business plans etc. Respondents in the Free

State made reference to the Free State Development Fund (FSDF) which closed its books with unutilised funds. The problems relating to funding, but also the criteria for funding and the capacities of those who control such funds must be addressed.

- The ICT BEE Council must make proposals to the Department of Labour (DOL) as to how un-utilised funds in the relevant SETA's can be used as collateral for broad-based BEE within the sector.
- A special BEE fund must be established to finance the acquisition of equity from established companies in the ICT industry. For example, the R15 billion earmarked by Treasury for BEE could be apportioned per sector. The ICT sector's portion must then be ring fenced for financing in the ICT sector.
- A checklist to review valuation methods and due diligence processes followed to determine the rand value of BEE investments needs to be specifically designed for the ICT Sector.
- Dividend policies must be adaptable and strike a healthy balance between the need to repay debt finance and the working capital requirements of the BEE company.

Equity Equivalents

- The overwhelming majority of respondents recommended that equity equivalents should not be considered in any form. The following counter arguments have been advanced by the majority of industry associations, provincial submissions, local enterprises and some multinationals:
 - There should be one measurement for all companies governed by the ICT Sector Charter. In respect of equity one rule must apply for all companies, local or international. No alternative investments or equity equivalents should be considered.
 - Ownership of assets by black South Africans is a key imperative, and should not be replaced by other instruments such as equity equivalents or special purpose vehicles
 - For foreign companies to operate in SA black equity ownership requirements similar to those set out in the Telecommunications Act (gazetted as up to 30%) should be made applicable to all companies operating in the sector including multinationals.

- There are some multi-nationals who have successfully implemented BEE shareholder equity. The Charter must have a specific focus on this aspect with a much stronger call for participation by all multi-nationals.
- In addition, multinationals have in other countries been prepared to take on local shareholders be it in response to foreign ownership limitations or for strategic reasons.

There has been some limited support of the position of the above named multinationals, mainly based on the need for foreign direct investment. This matter is currently the subject of much debate and the issue will only be resolved after extensive consultations with industry stakeholders, including local companies, government and ongoing dialogue by the Working Group with the South African representatives of the multinationals concerned (and where feasible, directly with their overseas principals as well).

This is one of the key areas on which there are diametrically opposed views and the Working Group has accordingly committed itself to a solution.

Fronting

- The ICT BEE Council should publish and constantly revise a clear comprehensive definition of fronting with specific examples of what is prohibited. The Council should appoint, amongst its members, an Anti-Fronting Sub-committee which may co-opt other specialists with expertise in the areas of company law, corporate finance and auditing expertise, etc.
- It has also been recommended that anti-fronting guidelines need to be developed in conjunction with other stakeholders including a mechanism for blacklisting of fronting.
- Where any company is discovered to be engaging in the act of fronting, all involved parties should be blacklisted.
- Whistle-blowing in this area by potential partners, employees, competitors and customers must be encouraged by means of a hotline established by the ICT BEE Council.

State Owned Enterprises

- The issue of equity in SOEs remains a huge concern. This category should be evaluated based on the quantifiable Black shareholding and all the other BEE initiatives that apply.
- Government shareholding in SOE's must be excluded. This will encourage Government to devise schemes to bring more black people in as shareholders when privatising such entities.

Broad-based collective ownership and ESOPS

- Ownership must be broad-based and by implication should address broad employee participation e.g. ESOPS, rural development and general poverty alleviation. Points must be awarded for the inclusion of specific broad based models in the ownership section of the scorecard.
- It is imperative that black employees play a substantial and meaningful role in equity ownership in the enterprises that employ them and the BEE Council should issue guidelines on what form such participation should take.
- Broad based ownership points may also be earned by the inclusion of the cooperatives where applicable.
- Broad-based equity ownership should include a geographic and gender spread to avoid a situation where only black men benefit.
- The principle as applied in Khulisa and other retail schemes need to be encouraged.

Direct versus indirect empowerment

- At least one industry association has submitted that indirect ownership should be considered for the equity portion of the scorecard. In this event, the ICT BEE council would be required to issue a guidelines on how such indirect ownership would be quantified, with specific reference to the methodology to be used in the process. The majority of the submissions proposed that only direct empowerment should be considered. A third *via media* is that the indirect element, if any, would receive a smaller weighting and only be considered after the direct empowerment component has been satisfied.
- A further variation is that indirect shareholding be considered for the equity portion of the scorecard provided that the indirect

vehicle is directly controlled by black people (i.e. more than 50% owned by black people).

Limitations on BEE shareholding

- Where a BEE shareholder sells shares in the open market or to a non-BEE third party, should attract BEE points for an agreed window period not exceeding 6 months where the shares are transferred or sold through no fault of the empowered company. This period is meant for the said BEE company to source a replacement BEE partner.
- It has been submitted that this Charter should deal with the issue of premature disposal of shares by BEE shareholders. The intention is to protect and maintain the BEE status of the said empowered company. A standard clause addressing this issue needs to be recommended for inclusion in all BEE agreements entered in the industry.

SMME

- It has been submitted that the BEE council recommend to government the establishment of an equity fund to assist SMMEs in purchasing equity.

General recommendations

- Shareholder agreements should include terms intended for the protection of minority share interest through board appointments and voting rights. Minority shareholder interests must be protected through board appointments and voting rights.
- It is submitted that a distinction be made between real shareholding and subscription agreements in terms of which ownership does not vest immediately, but is dependant on some future condition or event taking place.

5.2. Management and Control

Overview

Black people currently hold approximately 14.2%² of all director positions in publicly listed ICT enterprises at the JSE. Of this, black women occupy a mere 1.23%³ of executive directorship positions and 1.37%³ of non-executive positions.

The ratio of executive to non-executive directors on the JSE is estimated at around 1:1 for all directors. However, the ratio for black executive director to black non-executive director is currently estimated at 1:6³. The research indicates that most black directors are currently appointed as non-executive directors.

Objectives

The main objectives of this Charter as it pertains to this indicator are to: -

- increase the number of black people, including black women, and people with disabilities in executive management positions in the ICT sector;
- increase the number of black people, including black women, and people with disabilities, in top line management as well as specialist positions in the ICT sector;
- increase the number of black youth given opportunities to fast-track into senior management positions;

Challenges

The following are some of the major challenges facing the sector: -

- **Lack of meaningful participation by blacks at management level** – Most management positions are still occupied by whites.
- **'Window-dressing'** - Some companies tend to be opportunistic and rely on 'window-dressing' as a mechanism of addressing management at operational level. This practise

² Wu, C. Lorio, P. and Naidoo, C. , 2004, *An Analysis of the BEE Status of JSE-listed Information Technology and Electronic Sectors*, Unpublished research, Empowerdex

³ Jack, V. and Wu, C. 2003. *Pioneers, Powers and Pundits, black management on the JSE* www.empowerdex.com, Empowerdex

refers to the situation where black or female candidates would be appointed with the appropriate title but with little or no say in the areas related directly to their positions or title. In many instances, this has manifested itself in the prevalent practice of “fronting”.

- **‘Job hopping’** – Job hopping by black managers has been identified as a challenge in the sense that there is a small pool of skilled black managers to draw on. Investment in such managers is risky given that once they become skilled they are often lured by higher salaries elsewhere. On the other hand the argument is made that this may not be a challenge *per se* but in fact a challenge or a symptom of the market place. Any limited resource (in this case black managers) will attract a premium. It is argued that the way to combat the underlying problem is to increase the pool of available black managers or skilled resources so that they are no longer limited and therefore do not attract a premium (measures to discourage black executives/managers from job hopping).
- **Succession Planning** – There is evidence of a lack of succession planning and mentoring in the ICT industry.
- **Under-employment** – Black managers are appointed into positions where their skills and qualifications are not fully utilized.
- **Pledging and /or Ceding of Shares to Financiers** - Traditionally, control and by default, executive management in any enterprise is determined by ownership. Shareholders exercise control over the shares they own by appointing executive management of their choice. In the case of BEE and the limited funding related thereto, where equity transactions have been done, shares are generally pledged to financiers as security. Financiers tend to insist on complete control over the shares that have been pledged to them, thus limiting the ability of the black shareholder to appoint management of their choice.

Recommendations

- There is a need to provide more details on gender details on black directors and gender in listed companies.
- A mechanism needs to be developed to allow for control to vest in black people whilst their shares are still encumbered which will enable the black shareholder to appoint executive management of their choice.
- A clear distinction needs to be made when shares are pledged as security as opposed to when they are ceded.
- Regarding the issue of job-hopping, it is argued that the way to combat the underlying problem is to increase the pool of available black managers or skilled resources so that they are no longer limited and therefore do not attract a premium (measures to discourage black executives/managers from job hopping).
- Black management development programmes need to be made more widely available, affordable and easily accessible. This will ensure that a larger pool of black executive managers is available to draw from.
- Specific targets for black women executive management need to be set.
- The ICT BEE Council should be encouraged to scrutinise the employment conditions of black executives in the sector including such issues as job description, remuneration, and level of responsibility.

5.3. Employment Equity

Overview

The Employment Equity Act was established in order to accelerate equity in the workplace. According to the preliminary findings of 2002/3 analysis of the WSP-Training Report 2002/3 report from the ISETT SETA, the ICT sector (excluding Broadcasting) employs 108,574 people in South Africa⁴, a mere 0.8 percent of the 13.7 million economic active population in South Africa⁵. The employment equity profile in the ICT sector (excluding Broadcasting) is as follows:

Occupational Level	Black Female	Black Representation (including Male and Female)
Senior Officials	4.36%	20.00%
Professionals	5.79%	22.98%
Technicians & Associate Professionals	8.90%	46.66%
Clerical / Admin Workers	29.14%	51.44%
Service Workers	30.18%	62.27%
Plant & Machine Operators and Assemblers	26.27%	85.47%
Labourers	37.75%	93.93%
Elementary Occupations	39.70%	91.29%

Source: 2002/3 ISETT SETA REPORT

Objectives

The main objectives of this Charter as it pertains to this indicator are to: -

- ensure that BEE accredited ICT companies comply with the requirements of the Employment Equity (EE) Act;
- encourage SMME's, which are otherwise exempted from the requirements of the EE Act, to submit information for purposes of sector skills assessments;
- encourage enterprises to develop and implement Affirmative Action policies and guidelines;
- align employment equity targets with skills development programmes and outcomes;
- encourage enterprises to embark on diversity management programmes for all employees at all levels;

⁴ ISETT SETA, 2004 , Analysis of 2002/3 WSP and Training Report of the Information Systems, Electronics and Telecommunications Technologies Sectors

⁵ StatSA 2004 Labour Force Survey

- to place specific focus on the participation of black people, including black women, in the first line decision making positions; and
- ensure black people, including black women, participate at all levels of management in enterprises, especially at the operational level.

Challenges

The following are some of the major challenges facing the sector with respect to the objectives described above:-

- **'Window-dressing'** - Some companies tend to be opportunistic and rely on 'window-dressing' as a mechanism for meeting employment equity targets.
- **Line versus Support functions** – Black employees are often appointed into support and administrative functions which are peripheral to the core business operation.
- **Non-accommodation** – Black people are expected to adapt to the entrenched company culture without any regard or sensitivities to their cultural values and norms such as *"ubuntu/botho"*.
- **"Non-regulated enterprises"** – Enterprises employing less than fifty people have no legal obligation under the Employment Equity Act to submit Employment Equity reports and plans. This situation makes it difficult to accurately determine, assess and monitor employment equity practices in the sector. Where employment equity intervention may be required as far as these enterprises are concerned, this task is not made very easy.

Recommendations

- Diversity management programmes to overcome the challenges presented by the various cultural differences within organizations need to be implemented.
- Employment Equity should be regarded as an indispensable element of a business strategy benefiting both employers and employees alike. It should further be regarded as a mechanism or tool which will ultimately result in employers having access to a wider skills base, and thereby maximising profits.
- The ICT BEE Council, in conjunction with SETAs, should compile an annual analysis of available black and female ICT skills to deal with the oft repeated excuse of the non-availability of suitably qualified black candidates by companies who make no effort to find them.

5.4. Skills Development

Overview

According to a recent report (published in February 2004), South Africa's position in the human development index has dropped from 94th to 107th place in 2002 despite an aggressive national skills development policy through the Skills Development Act and other legislation⁶.

The same report states that only 29 percent of the African⁷ (that is, excluding "Indian" and "Coloured") school-leavers are able to secure jobs despite a shortage of skills. In the same report, it is stated that South Africa occupies almost all the last positions in indices that had to do with science and technology capacity.

It is generally agreed that there exists no coherent implementation of a national ICT skills development strategy. Only 21 percent of the skills development levy paying companies had grant disbursement reimbursed to them for the implementation of training programs. This number drops even further to 7 percent for the small levy-paying employers⁸.

The development of skills in the ICT sector is identified as one of the major catalysts for transformation in the sector. Currently, the overwhelming majority of semi-skilled and non-skilled positions are occupied by blacks whereas whites occupy most highly-skilled and specialist positions in the sector.

Objectives

The main objectives of this Charter as it pertains to this indicator are to: -

- promote and support the aims and objectives of the Skills Development Act as well as the ISETT SETA, MAPPP SETA and other relevant bodies;

⁶ Budlender, D. 2004 *International Benchmarks, Human Resource Development Review*, Chapter 11, HSRC

⁷ Kraak, A. 2004 *HRD and the Skills Crisis, Human Resource Development Review*, Chapter 28, HSRC

⁸ Kraak, A. 2004 *HRD and the Skills Crisis, Human Resource Development Review*, Chapter 28, HSRC

- increase the number of black people, including black women, the youth and black people with disabilities, at the management, technical and specialist levels;
- ensure that skills development and training programmes mirror market demand in the sector;
- ensure that the institutions that supply ICTs are on track in providing what the labour market requires;
- promote awareness of career opportunities in the ICT sector at secondary and tertiary institutions;
- to ensure that BEE accredited ICT companies comply with the requirements of the Skills Development Act, irrespective of size of the enterprise;
- to co-operate with the relevant regulatory authority in the commercialization of training institutions and programs in the ICT sector, especially those causing over-supply of specific skills in the sector;
- to set clear and precise guidelines over and above the existing statutory requirements, for effective skills development initiatives specifically aimed at historically disadvantaged individuals;
- to set annual guidelines for the number of learnerships required to be registered in each sub-sector of the ICT sector; and
- to assist the ISETT SETA and other SETA's relevant to the ICT sector in formulating tripartite partnerships between enterprises, training service providers and itself to embark on learnerships that feed directly into skill gap areas.

Challenges

The following are some of the major challenges facing the sector: -

- **Co-ordination** – There needs to be co-ordination and alignment of skills development programmes in the industry as well as alignment of the long-term requirements of industry with the capacity of the tertiary education sector.
- **Opportunities** – There are fewer opportunities to exercise the skills gained through learnerships.
- **Lack of commitment** – There is a tendency among certain enterprises to view skills development as an onerous exercise and to regard the statutory levy (of 1 percent of wage bill)

merely as an additional form of taxation. There is also a view that prior to 1994 there existed a clear commitment by enterprises to skills development and training which favoured whites. The business sector has also been accused of failure to second sufficiently senior representatives to governing structures of the SETAS.

- **Cost of Training** – The cost of providing training is deemed prohibitive for both companies and individuals.
- **'Fly-by-Night' Training Institutions** – These institutions create artificial and unrecognized skills that are both costly and raise misguided expectations by the labour entrants. This is exacerbated by the practice of dubious certification of learners, which certificates are not recognised by the market.
- **Training in Small and Medium Enterprises** – small and medium enterprises find it difficult in implementing formal skills development program.
- **Management Skills** – shortage of black management skills, especially among women, must be addressed.
- **Learnership Targets** – More learnerships are needed in order to narrow the skills requirement gap that exists. However, an industry wide skills analysis need to be undertaken before more investment in surplus and unnecessary skills is made.
- **Failure by enterprises and SMMEs to appreciate the win-win** involved in embarking on learnerships, i.e, ROI and growth of profit margins in utilising “sponsored labour” in projects for companies and experiential training for particularly the youth and growth for those employees in existing employment who would otherwise be affected by structural changes (eg. possible retrenchments) within their enterprises.

Recommendations

- The objectives of this indicator should not only be confined to addressing the skills shortage in the ICT sector, but should also be focused on ensuring that the SETAs are held accountable for the efficient distribution of funds for the appropriate skills development programmes.
- ICT companies must implement mentoring projects to enhance the development of specialised skills through the utilisation of industry professionals within existing organisations. In turn, the Council must issue specific guidelines on acceptable mentoring programmes and how they will be measured.
- Specific targets must be set for the training of black employees over and above the statutory levy as prescribed in the Skills Development Act.
- Compliance with the Skills Development Act must constitute a separate measurable milestone in awarding points in respect of this indicator.
- Targets need to be set for companies to institute learnerships in fulfilment of predetermined sectoral and/or sub-sectoral annual targets.
- A percentage of the Skills Levy collected per annum should be earmarked for entrepreneurial development and training.

5.5. Preferential Procurement

Overview

This indicator is critical to the success or failure of the government's strategy on BEE. Successfully implemented, it will ensure redistribution of incomes, skills development and transfer, as well as job creation.

Research conducted on listed entities, reveals that of the R515 billion⁹ that was targeted to reach BEE accredited companies, R500 billion⁹ did not reach them. Of this misdirected R500 billion, an estimated R200 billion⁹ could have reached the pockets of black persons, either in the forms of salaries, profits or procurement spend paid to black owners and stakeholders.

A similar study on the potential affirmative procurement gap of JSE-listed companies in the Information Technology, Telecommunication and Electronic sectors estimates the affirmative procurement gap in the ICT sector to be between R 27.3 billion and R 45.6 billion¹⁰. Delays in the implementation of affirmative procurement programmes across the ICT sector resulted in an estimated R 8.3 billion to R 13.8 billion¹⁰ being lost to black owners and employees.

This is because most procurement opportunities in the private sector are traditionally directed to white suppliers. However, over the last ten years, SOEs have been instrumental in spearheading preferential procurement from black owned and empowered enterprises. Preferential procurement has resulted in the creation of opportunities for black entrepreneurship.

Genuine BEE procurement will only be possible when there are sufficient, competent BEE rated suppliers of goods and services.

⁹ Wu,C. Jack, V. Lorio, P. Naidoo, C. and Bodigelo,S. 2004 *The Affirmative Procurement Gap in the South African Economy*, Nedcor BEE Forum, 26 February 2004

¹⁰ Wu,C. and Lorio, P. 2004. *An estimate of the affirmative procurement gap in the ICT Sector*, Unpublished Report, Empowerdex (*The analysis is based on the procurement of all JSE listed companies in the IT Software, IT Hardware and Electronics Sectors of the JSE*)

Objectives

The main objectives of this Charter as it pertains to this indicator are to: -

- increase the amount of money spent on procuring from BEE enterprises; focus should be on procuring from Black-owned and Black-controlled enterprises;
- provide incentives for enterprises to procure from (respective sectoral) Charter compliant enterprises thus ensuring the ripple effect of affirmative procurement is realised throughout the economy;
- ensure that ICT and other skills that would otherwise be lost through, say retrenchments, are still made available to the sector and the economy; and
- establish a co-ordinated framework for the implementation of black supplier development programs.

Challenges

The following are some of the major challenges facing the sector: -

- **Peripheral and non-core procurement** – Black suppliers are often appointed to supply only peripheral products and services.
- **Abuse of Non-Discretionary Spend Principle** - the principle that the percentage of affirmative procurement should be calculated from a total excluding goods and services not ordinarily available from black or local suppliers, is inherently open to abuse and requires serious attention and creativity.
- **Lack of suitable black suppliers** – due to the lack of supplier development, there is a shortage of suitable black suppliers. This has also contributed largely to the practice of *“fronting”*.
- **Quality of Product and Delivery** – some large companies have expressed legitimate concerns over the quality of goods and services procured from some inexperienced and emerging black SMME's.
- **Preferential Payment Cycles** – black companies, particularly black SMME's, are generally not offered preferential payment cycles resulting in adverse cash flow positions.

- **Improved Delivery Mechanisms within SITA** – SITA is responsible for the majority of ICT procurement by the South African Government, which in turn is the major purchaser of ICT products and services in the country. Increased efficiencies, transparency and accountability in the ITAC process will impact positively in the growth of black business.
- **Inter-sectoral co-ordination** – since no enterprise, especially a large one, will procure all of its input goods and services from a single sector of the economy, there needs to be effective interaction between the different sectors to ensure consistent application of the BEE principles.
- **Abuse of black SMMEs for tendering purposes** - Larger or established enterprises use black SMME names for compliance when submitting responses to tenders and most do not engage these SMMEs once the tender is awarded. Alternatively, these SMMEs are only used to procure peripheral products and services.
- **Allotment of BEE points for tenders** – It has been suggested that the 10 out of 100 points normally allocated for BEE compliance by SOEs when calling for responses for procurement tenders is too low and should be increased. It is submitted that this practice does not encourage established companies to comply with BEE requirements as they can make up for their lack of BEE status by, for instance, offering better prices.
- **Unfavourable pricing from black SMMEs** – Due to their relative size and lack of sourcing power, black SMMEs find it difficult to enjoy better discounts than established white enterprises. Consequently black SMMEs experience difficulty in offering better pricing in order to compete with established larger companies.
- **Centralised Unfavourable Procurement Practice** – It is submitted that most procurement decisions are made in Gauteng on behalf of the other regions. It is argued that this practice stunts regional growth and does not encourage local enterprises to be properly considered when procuring for goods and services and further encourages the abuse of local SMMEs.

- **Procurement Commitments Monitoring at Primary and Secondary Levels** – It is submitted that where large tenders, involving black SMMEs are awarded, a monitoring mechanism in place to ensure that tender conditions and commitments made in the submissions are followed through during implementation. There is a tendency to only screen companies responding to a tender, whilst they subsequently outsource or subcontract to non empowered companies they proceed then outsource or subcontract to white companies or companies that fail to comply with the BEE principles.
- **Original Equipment Manufacturers (OEM)** – Where OEMs, mainly foreign owned enterprises, are specifically invited to respond to tenders or are allowed to do so without any requirement for BEE, black SMMEs find it impossible to participate as they cannot compete on any front and are practically excluded.
- **Best Practices in Procurement** – There currently exists no published industry best practice models in procurement. More significantly the absence of an authorised, recognised and industry backed monitoring and accreditation body is a huge challenge that needs urgent attention It has been submitted that this issue be fully explored.

Recommendations

- **Lack of suitable black suppliers** – Where no suitable BEE supplier can be found, purchasing entities must take action to develop the capacity, in terms of the Enterprise Development criteria of this Charter. The accreditation process envisaged in this Charter will create a database of potential BEE suppliers in partnership with existing programmes such as the dti website ICT-E database.
- **Quality of Product and Delivery** – This problem is sometimes attitudinal but these concerns are often genuine and will be addressed through improved supply agreements that include quality management processes. Purchasers should seek ways to transfer appropriate skills to the suppliers.

- **Preferential Payment Cycles** – Companies must spell out in their published procurement policies what payment terms are reserved for black owned SMMEs expressed in days from receipt of invoice. Bonus points will be awarded for policies stipulating a maximum payment period of thirty days or less.
- **Improved Delivery Mechanisms within SITA** – SITA will not only undertake to achieve the highest possible compliance with this Charter but will recognise that it has a special role to play as the single largest purchasing entity in the sector. This should equally apply to all SOEs active in the ICT sector.
- **Inter-sectoral co-ordination** – the issue of co-ordination and consistency between separate industries and charters is addressed by cross-reference to other sectoral charters and to the principles enshrined in the BBBEE Act where no sectoral charter exists. Currently, the Financial Sector charter is to be given particular attention.
- **Allotment of BEE points for tenders** – A suggestion has been made to change the formula to 20 out of 100 points in tender adjudications. It has also been suggested that a local supplier amount be set aside.
- **Unfavourable pricing from black SMMEs** – It has been suggested, as one of possible remedies to this malaise, that a certain minimum amount of procurement in large tenders be set aside for participation by black SMMEs thus ensuring that they are not systematically excluded from participation.
- **Centralised Unfavourable Procurement Practice** – Purchasers from enterprises and public entities operating nationally must allocate a portion of procurement opportunities to local BEE companies in various regions. The ICT BEE Council in conjunction with provisional stakeholders must formulate specific guidelines and /quotas in this regard
- **Procurement Commitments Monitoring at Primary and Secondary Levels** – A special procurement accreditation and monitoring sub-committee is to be created by the ICT BEE Council to audit procurement practices of ICT enterprises. The

mandate of this subcommittee should be extended to include post contractual audits.

- **Original Equipment Manufacturers (OEM)** – Invitations to supply products sourced from overseas must allow for a local channel through BEE enterprises to be included and must also allow for local products to be offered where they meet the technical specifications. Foreign enterprises will be required to show how they are assisting with Enterprise Development (see relevant section of the Charter), and ensuring that there is a limitation on the money that flows out of the country.
- **Best Practices in Procurement** – The ICT Council will prepare a code of good practice, based on established publications (such as the World Information Technology & Services Alliance White Paper issued in 2004) and on further research.
- **Set asides** - Some procurement managers have stressed the need for set asides for Black SMME's and for Black women owned enterprises.
- Black companies need to be bound by broad based requirements of the Charter as well: equity should not be the sole determinant of their status.

5.6. Enterprise Development

Overview

Despite its potential, South Africa lags developing nations such as India, Taiwan and China in establishing a viable entrepreneurial base in the ICT sector. The ICT sector contributes less than ten percent to the GDP of South Africa, a far cry compared to the leading developing nations. This is largely due to the fact that South Africa is a consumer, rather than a developer or manufacturer, of ICT products and services. As a result, South Africa enjoys a relatively small share of the global opportunities in the sector.

Only about 10% of companies in the sector can be classified as having any empowerment credentials. A recent study has shown that many of the black SMMEs in the ICT sector may not be able to sustain their operations in the long-term due to structural and other deficiencies.

An entrepreneurial focus is key to the success of any BEE strategy and it logically follows that all efforts must be made to foster and encourage the development of an entrepreneurial society. A new entrepreneurial class will ultimately create jobs for their families and communities that will further positively impact on socio-economic development and growth.

The creation of sustainable SMME enterprises has succeeded in creating a new group of black business leaders. The model, where ownership and control is combined with entrepreneurial skills training, resulted in the creation of sustainable business enterprises. This resulted in job creation in some of the most under-served communities in South Africa.

A general point of departure for the good of the whole of the economy is the support of entrepreneurial education in schools and the establishment of focused entrepreneurial courses and undergraduate and post-graduate research at tertiary institutions. This entrepreneurial focus and support encompasses a joint partnership approach by all stakeholders, including government, civil society and industry.

Objectives

The main objectives of this Charter as it pertains to this indicator are to: -

- substantially increase participation by black entrepreneurs in the sector;
- create a supportive environment that will ensure the development of a sustainable black entrepreneurship base;
- establish a viable, sustainable and globally competitive entrepreneurial base;
- promote and support better co-ordination and co-operation between and amongst technology incubators, government, state owned enterprises, the private sector and incubated companies; and
- create employment.

Challenges

The following are some of the major challenges facing the sector: -

- **Prevalence of Low Value-Adding ICT Enterprises** – Most black SMMEs in the sector are largely set up to perform less value-adding roles in the value supply chain of ICT goods and services.

This challenge has been addressed in the Affirmative Procurement section.

- **Sustainability of Start-up ICT Enterprises** – As a result of the lack of capital base, access to support infrastructure, as well as the shortage of management skills, black SMMEs are often unable to fund and / or sustain their operations in the long term.
- **Lack of Entrepreneurial Culture/Job seeking mentality** – Black people were channelled by the Apartheid psyche to enter the job market over and above being encouraged to develop their own businesses.
- **Lack of management experience and/or training** – Although the lack of skills has been dealt with as a challenge under the skills development indicator, lack of managerial skills at a different level of focus needs emphasis.

- **Reluctance to partner with BEE companies and SMMEs** – It has been submitted that some enterprises involved in the services environment (as opposed to product vendors) do not partner with BEE companies and SMMEs for fear of creating competition.
- **SMME Development Programme** – There needs to be a co-ordinated industry effort at developing sustainable black SMMEs in the sector, especially in manufacturing. This initiative should augment and/or support other programmes currently implemented by the DTI.
- **Lack of Commitment to Develop Sizeable Black Enterprises** It has been submitted that some larger white owned enterprises do not encourage the development of sizeable black owned enterprises as these are perceived as potential threats to their survival and continued dominance of the sector. This kind of thinking clearly fails to recognize that great sections of the South African market as well as the growing market on the continent and indeed the world market are available to those who are willing to take the chance to establish themselves as providers to these new markets. This argument is very short sighted and in the long term cripples growth and development.
- **Limited Knowledge of Available Enterprise Support Programmes** – Most BEE enterprises have limited knowledge of government policies and enterprise support measures that are currently in place. Consequently, access to available enterprise incentives such as through the DTI's Black Business Supplier Development Programme is very low.
- **Agreements with Government Institutions** – It is submitted that voluntary agreements with government institutions (such as the Media Development and Diversity Agency) regarding funding to assist in the achievement of their mandate (which includes the development of SMMEs in the Broadcasting sub-sector) should be considered as enterprise development indicator.
- **Insufficient support** is received from government and quasi governmental enterprises for local manufacturers and their products.

- **Measurement Criteria** - It is not clear what standards should be used to measure performance for this indicator. Suggestions have been made that range from using a percentage of total assets, proportion of total procurement spend, jobs created, to percentage of growth attributable to partnering.

Recommendations

Partnerships: Partnerships must drive enterprise development through the entire supply chain by transferring skills and business knowledge that is essential for sustainable growth.

In a mentor/protégé relationship there should be clearly stated agreements detailing the terms and conditions of engagement, which must include timelines, repayment of loans, equity swap and an exit plan. These agreements must be structured to prevent cashing in on empowerment deals without sustainable empowerment being created.

SMME Development Strategy: There needs to be a co-ordinated industry effort at developing sustainable black SMMEs in the sector, especially in manufacturing and software development. Such initiatives should augment and/or support other programmes currently implemented such as by the DTI.

Better coordination and collaboration between incubation hubs: Incubation should be considered as another option to develop credible enterprises. The incubation process needs to be co-ordinated with institutions of higher learning, which together with the enterprises should be working to develop a unique South African based intellectual property.

Black Supplier Development Programme

The following could be used as a means to promote and support black supplier development programme:

- **Price Matching:** Certain commodity prices should be set at a competitive level and benchmarked to ensure supplier sustainability and to discourage price war.
- **Tender Advice:** Assistance must be provided by organisations that issue tenders to those companies that need such assistance in the tendering process. This is intended to increase the participation and capacity to meet the tender requirements by black companies.

5.7. Residual Category

Overview

The industry has identified the need for industry specific initiatives, which will result in the formulation of co-ordinated and sustainable programmes to bridge the “*digital divide*” and to ensure that corporate social investment is implemented within a set of sustainable long term objectives. It is therefore intended that enterprises appropriate more resources in an effort to drive and/or support these industry specific initiatives.

Objectives

The main objectives of this Charter as it pertains to this indicator are to: -

- identify and align initiatives with national priority programmes;
- improve ICT skills to previously disadvantaged communities and individuals with special emphasis on rural communities
- support the provision of universal access to ICT infrastructure;
- co-ordinate various initiatives to enhance their collective impact; and
- take full advantage of traditional corporate social investment and promoting the allocation of corporate social investments to initiatives that aim to “*bridge the digital divide*”.

Challenges

The following are some of the major challenges facing the sector: -

- **Absence of supportive infrastructure** – Projects aimed at bridging the digital divide can only be implemented in conjunction with other infrastructures such as buildings, electricity, roads, etc
- **Lack of Co-ordination** –lack of co-ordination results in duplication of resources and clamouring for limited resources by NGO’s.
- **Sustainability and Impact** – Projects are implemented with short-term objectives in mind. The results and impact of some of these projects are minimal and seldom monitored.
- **Contribution by SMMEs to Sector Programs** – Due to their relative size and the lack of available resources, SMMEs often

find it difficult to invest in sustainable programs that will have the desired effects.

- **Relevance of existing projects to ICT** – Enterprises often invest in projects with limited relevance to the ICT sector. In many instances, enterprises view corporate social investment as part of their 'old equipment replacement strategy'.
- **Company Control** – Most companies would understandably wish to have direct control as to where and how their social investment funds are deployed. This needs to be balanced with the need to identify and align their programmes with certain national and sectoral priorities.
- **Overlap between CSI, Sponsorship and Marketing** – Debate on whether the registered obligations should be part of CSI and whether there should be a standard set for CSI.
- **CSI Measurement** – The standard of measurements i.e. whether targets should be set as % of Profits after tax, Profits before tax or even revenue has been a point of debate. It has also been submitted that CSI performance be measured in ways other than contribution of percentage of profits, such as a % of revenue, as this would be inappropriate for enterprises realising an after tax loss or no profit at all.

It has been further submitted that industries' ability to make an impact in the area of CSI is directly proportional to the financial well being of the organization.

Recommendations

- The ICT BEE Council should undertake and drive an industry initiative to ensure maximum access to ICT infrastructure, education and training to all South Africans by end 2014. In this regard, by 2012 no South African learner should be less than a 5km radius away from such access to ICT infrastructure. This programme should be undertaken in collaboration with other bodies such as government, NGOs and other existing projects such as the Gauteng Department of Education's Gauteng Online Project.
- Close monitoring of Corporate Social Investments is required. Any social investment initiative should have an integrated plan

and be properly coordinated such that it involves all stakeholders so as to optimize the intended benefits.

- The Charter must encourage the growth of ICT capabilities outside the major metropolitan areas by taking technology into rural and township schools
- The Charter must clearly encapsulate the point that training and development of relevant applications is as important as the rollout of infrastructure for bridging the digital divide. Training and the development of relevant applications to ensure effective usage of the technology and infrastructure available in order to meaningfully bridge the digital divide, training and the development of relevant applications is as important as the rollout of infrastructure itself.
- Care must be taken not to overstate “relevance to ICT”, as there are other voluntary interventions that are undertaken in response to the national needs of the country e.g. HIV/AIDS, Crime prevention etc.
- The ICT BEE Council must establish a fund to allow SMME’s to contribute to CSI without necessarily having to execute projects because of a lack of capacity. A counter proposal would be to exempt SMME’s of a particular size from the ordinary CSI element but they must contribute to accredited digital divide programmes according to their means.
- The support of entrepreneurial education in schools and the establishment of focused entrepreneurial courses and undergraduate and post-graduate research at tertiary institutions can also be used as measures
- Any organisation that wishes to present BEE awards in the industry should do so with the approval of and in collaboration with the ICT BEE Council.

CHAPTER 6

The ICT BEE Scorecard presents, in a matrix format, the major BEE indicators including their respective targets and weightings. The scorecard only provides quantifiable transformational targets and should be applied in conjunction with any other provisions of this Charter.

Core Component

The Core Component column of the scorecard lists all the broad based aspects of transformation as determined by the Department of Trade and Industry (DTI). It also expands the specifics of these in the "Indicators" column.

Indicators

The indicators outlined in the scorecard and the respective targets are used to, as accurately as possible, measure transformational requirements and achievements by enterprises in each of the areas indicated therein.

Weightings

The "*ICT Split Weighting*" represents weightings as determined specifically by and for the ICT sector. The split weightings are added to give a "*Total Weighting*" for that Core Component. The total weighting of the components shall add up to a maximum 100 basis points.

Targets

The targets are divided into two terms namely; mid-term (MT) and long-term (LT). The principles and targets contained in this Charter will be applied from the effective date and shall remain applicable even beyond the long-term date.

In determining the degree of empowerment, points earned will enable enterprises to be classified in the four categories, namely;

Category A (an enterprise earning over 80% points)	= "Gold Certificate of Empowerment"
Category B (an enterprise earning between 66% points and 79% points)	= "Silver Certificate of Empowerment"
Category C (an enterprise earning between 50% points and 65% points)	= "Bronze Certificate of Empowerment"
Category D (an enterprise earning less than 49% points)	= "Not Empowered"

It must be emphasised the targets contained in the scorecard represent the minimum requirements for compliance with the aims and objectives of BBBEE.

Exemptions

No enterprise shall be exempted to perform or meet the transformation targets related to any of the Core Components or Indicators of the Charter as set out in the scorecard.

Minimum score

To the extent that there shall be no exemptions on any of the Core Components of the scorecard, there shall be a minimum score which need to be obtained for each indicator.

Bonus points

In this regard, it has been submitted that consideration be given to award bonus points where an enterprise exceeds the stipulated target by a certain factor. This will serve as an incentive for companies to compete and strive to do more than the bare minimum requirements.

To illustrate this point, let us say Company X complies with only the minimum requirements of the Charter. Company X should, for example, attain 50 percent of the maximum possible BEE points. If Company Y, on the other hand, exceeds the minimum in respect of one or two indicators, it would attain, for example, 75% of the maximum possible BEE points. If Company Z exceeds the minimum requirements by a factor larger than Company Y by more or all of the indicators, it could attain, for example, 90% or so of the maximum possible BEE points.

Penalty Points

It has been submitted that that penalty points be awarded where an enterprise does not meet the stipulated minimum target for a specific Indicator. Whereas an enterprise will be awarded zero points for not adequately meeting a stipulated minimum target for an Indicator, a negative score amounting to 25 percent of the total available target points will be awarded to those enterprises that make no attempt at meeting the target. In light of the above submission re Bonus Points, it remains a moot point whether or not this is still necessary.

CORE COMPONENT	INDICATORS	ICT SPLIT Weighting in %	TOTAL Weighting in %	MID TERM TARGET RANGE (2009)	LONG TERM TARGET RANGE (2014)
<i>Direct Empowerment Score</i>					
A. Equity Ownership	a) % share of economic benefits as reflected by direct shareholding by black people;	12	20	*25-35%	25-51%
	b) % share of economic benefits as reflected by direct shareholding by black women and black people with disabilities as a percentage of (a) above;	5		15-30%	30-40%
	c) broad-based collective ownership as a % of (a) above	3		5-10%	10%
B. Management	a) % black people in senior and/or executive management and/or executive board committees	4	10	30-50%	50-80%
	b) % black women in senior and/or executive management positions	4		15-30%	30-40%
	c) % of other marginalised groupings in management	2		1-5%	1-5%
<i>Human Resource Development and Employment Equity Score</i>					
C. Employment Equity	a) Compliance with EE Act supported by DoL or ICT Council certificate of compliance;	3	10	100%	100%
	b) Achievement of set performance targets. <ul style="list-style-type: none"> • Senior Management 	3		25%-40%	35%-60%

	<ul style="list-style-type: none"> Middle Management Junior Management 	2 2		30%-50% 40%-60%	45%-75% 55%-80%
D. Skills Development	a) Compliance with Skills Development Act and submission of workplace skills plans and annual training report	5	20	1% of payroll per SD Act	1% payroll per SD Act
	b) Extra spend (above SD levy) targeted at black employees;	10		1-3%	1-1.5%
	c) Provision of learnerships as per annual ICT BEE Council guidelines	5		refer to guidelines	refer to guidelines
<i>Indirect Empowerment Score</i>					
E. Preferential Procurement	a) Procurement of goods and services from black-owned and / or black empowered enterprises (as a proportion of total eligible procurement spend)	10	22	30-60%	50-80%
	b) Procurement of goods and services from black-engendered enterprises (as a proportion of total eligible procurement spend)	5		15-30%	25-40%
	c) Published Affirmative Procurement Policy and Supplier Questionnaire approved by ICT BEE Council	3		Per Council Approval	Per Council Approval
	Published favourable payment terms for black SMMEs.	4		<=30 days	<=30 days
F. Enterprise Development	Voluntary establishment and/or support of the development of black-owned and empowered ICT enterprises through funding measured as a % of total procurement spend / total assets / jobs created	7	7	to be confirmed	to be confirmed
G. Residual	a) Investment in sustainable ICT Council accredited projects aimed at accelerating access to ICT & training measured as a % of profits before tax ("PBT");	8	11	1-2% of PBT	1-2% of PBT
	b) General CSI as a % of PBT	3		1-2% of PBT	1-2% of PBT

CHAPTER 7

THE ICT BEE COUNCIL

Establishment of the ICT BEE Council

The operation of the Charter is intended to commence on 1 March 2005. With effect to this date the ICT Empowerment Charter Working Group shall be dissolved and the implementation phase and all matters incidental thereto shall be handed over to the ICT BEE Council.

7.1. Functions of the Council

- 7.1.1. The Council shall be the custodian of the ICT Charter;
- 7.1.2. The Council shall advise the Presidential National Commission on Information Society and Development and other organs of state on all matters relating to BEE in the ICT sector;
- 7.1.3. The Council shall monitor and review the implementation of the Charter and all matters related thereto in the ICT sector;
- 7.1.4. The Council shall be responsible for the development and fostering of common standards and codes of ethics for the implementation of BEE in the industry and compliance with BEE legislation and Codes of Good Practice;
- 7.1.5. The Council will establish an executive team to attend to its routine work and specifically to:
 - 7.1.5.1. receive, consider and approve annual audits from each ICT enterprise that applies for accreditation;
 - 7.1.5.2. issue guidance notes on the interpretation and application of the Charter;
 - 7.1.5.3. prepare an annual review which outlines progress and evaluates new areas of intervention;
 - 7.1.5.4. submit the annual review to the BEE Advisory Council for publication;
 - 7.1.5.5. prepare interim reports at appropriate intervals;
 - 7.1.5.6. undertake the reviews identified in terms of the Charter;

- 7.1.5.7. certify agencies that will audit companies in the sector for BEE accreditations purposes;
 - 7.1.5.8. confirm ICT BEE ratings and accreditations;
 - 7.1.5.9. engage with government, public sector, the BEE Advisory Council and other regulatory agencies to promote the implementation of the Charter; and
 - 7.1.5.10. assess, evaluate and commission research on specific areas where such research is not available.
- 7.1.6. The Council will ensure that the executive is adequately resourced and supported to fulfil its mandate as envisaged in the Charter. A business plan will be commissioned which will, amongst other things, outline a budget for the work of the Council;
- 7.1.7. The Council shall be responsible for the accreditation of national ICT projects aimed at *'bridging the digital divide'* in conjunction with existing bodies such as the Presidential National Commission on Information Society and Development, the Universal Services Agency, the Digital Divide Partnership, ICASA, the CSIR, trade unions, NGO's and other organs of civil society;
- 7.1.8. The Council shall facilitate the co-ordination of extra-industry programs and/or initiatives where there exist clearly defined projects of mutual collaboration or co-operation. As part of its inter-sectoral liaison responsibilities, the Council shall extend audit functions to include other Sector Charters such as the Financial Sector Charter; and
- 7.1.9. The Council shall be charged with participation in the quest for long term solutions to the challenges posed by the Open Source / Proprietary platform debate. This function shall be executed in conjunction with bodies such as the DTI, the CSIR Open Source Centre, and others.
- 7.1.10. The Council shall, where appropriate, consider the further breaking down of the scorecard to accommodate the specific needs of sub-sectors.

7.2. Powers of the Council

- 7.2.1. The Council will be established as an independent body with the mandate to, *inter alia*, oversee the implementation of the ICT Charter;
- 7.2.2. The Council may create sub-committees to deal with specific matters as and when required; and
- 7.2.3. The Council may co-opt experts to serve on or advise sub-committees as contemplated in 7.2.2 above.

7.3. Composition of the Council and Appointment of Members

- 7.3.1. The Council shall consist of:-
 - 7.3.1.1. a Chairperson, who shall be appointed by the Minister of Communications in consultation with the industry associations; and
 - 7.3.1.2. a Chief Executive Officer, who shall be responsible for the daily administration and operations of the Council; and
 - 7.3.1.3. no fewer than 15 and no more than 20 other members. Each of the four ICT sub-sectors shall be represented by three individuals with the balance made up of representatives of civil society, labour and government.
- 7.3.2. When appointing members in terms of the above regard shall be given to the need for the Council:-
 - 7.3.2.1. to have appropriate expertise;
 - 7.3.2.2. to represent different relevant constituencies including trade unions, business, community organisations, etc.
- 7.3.3. In appointing members in terms of the above, appropriate consultative processes shall be followed.
- 7.3.4. One member of the Council shall be appointed as the deputy chairperson and shall act as the chairperson of the Council in the absence of the person so appointed as per paragraph 7.3.1.1 above.

7.3.5. The terms of office for members of the Council shall be determined after due consultation with stakeholders.

7.4. The Constitution of the Council, the Codes of Business Ethics and Corporate Governance

7.4.1. A constitution for the Council must be formulated within 60 working days of the Council being established.

7.4.2. The constitution of the Council may be amended from time to time after consultation with the Council.

7.4.3. The Council may, by resolution, formulate rules to further regulate its proceedings.

7.5. Eligibility of Council Members

7.5.1. A person may not be appointed or continue as a Council member if such a person:

7.5.1.1. is an unrehabilitated insolvent; or

7.5.1.2. is of unsound mind, or is subject to an order of a competent court declaring such person to be mentally ill or mentally disordered; or

7.5.1.3. has at any time been removed from an office of trust on account of misconduct; or

7.5.1.4. or has been found guilty in terms of the Prevention of Corruption Act.

7.6. Funding of the Council

7.6.1.1. The Council shall be primarily funded by the ICT sector and may raise funding through other mechanisms that may be deemed appropriate from time to time. The funding mechanism should ensure cross-subsidisation or exemption of SMMES.

7.6.1.2. It is submitted that National Treasury also make a contribution to the Council from the government funds reportedly earmarked for BBBEE.

CHAPTER 8

THE PARTICIPANTS

Participants in the Charter Process

The following entities, representing various ICT industry stakeholders in South Africa's ICT value chain, participated in the processes leading to the formulation and adoption of this Charter. This list is by no means exhaustive and may, inadvertently, not mention other organisations, associations, companies and individuals whose contributions were received and have also been valuable in the process. Any omissions are unintentional and these will be rectified in future drafts once brought to the attention of the ICT EWG.

Various government officials and Ministers have contributed to the process to date. Special mention should go to the Department of Communications and the Department of Trade and Industry, which are more directly responsible for the charter process in our sector. Other departments which are relevant to this process include the Departments of Public Service and Administration, Labour & Education.

The following associations or entities participated in one way or another in the Charter process: BITF, CSSA, EIF, IISA, ISA, NAB, ITA, NCRF, ISETT SETA, SACOB, SACF, MAPPP SETA, ICASA, SITA, USA, SANGONET, CCASA, CompTIA

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