



THE ICT CHARTER

FOURTH WORKING DRAFT

AUGUST 2004

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PREFACE

Background and update on Charter Process

This section should be read in conjunction with the preface to the Third Working Draft in which we dealt, among others, with:

- the genesis of the ICT Charter drafting process;
- the centrality of INCLUSIVENESS as a guiding tenet of that process;
- the various consultative meetings held according to the following updated schedule: -
 - 25 June 2003 (Public Launch)
 - 16 and 17 September 2003 (First National Indaba)
 - 16 February 2004 (Digital-divide summit)
 - 9 March 2004 (Release of the First Working Draft)
 - 15 March – 7 April 2004 (National road-shows to 8 provinces outside Gauteng)
 - 8 April 2004 (Release of Second Working Draft)
 - 10 May 2004 (Release of Third Working Draft)
 - 14 May 2004 (Second National Indaba)
 - 7 June 2004 (Commencement of negotiations with Multinationals (Amcham))
 - 23 July 2004 – First formal consultation with Minister, Deputy-Minister and officials of the Department of Communications
 - 29 July 2004 - Briefing of Nedlac ICT Sector Summit sub-committee
 - 13 August 2004 – Announcement of formal engagement with Government
Announcement of Agreement on Multinationals

As communicated at the Second Indaba, the Third Draft was intended to be the last. However, after appeals by various stakeholders, due to the overwhelming number of responses received by the 31 May deadline and also owing to the delays in the negotiations with the multinationals, a decision was taken at the June Working Group meeting: -

- a. to extend the deadline for the finalisation of the Charter by some 3 months;
- b. to issue a Fourth Working Draft; and
- c. in parallel with the industry process, to initiate discussions with the Government and the Nedlac stakeholders.

In pursuance of the above, the Chairperson of the Working Group addressed Nedlac on 29 July 2004 where a decision was taken for the initiation of formal bilateral discussions with the

Labour and Community constituencies. An exploratory meeting was held in this regard on 5 August 2004.

The Working Group/Government bilateral negotiations have progressed well, the initial discussions with the Minister and Deputy-Minister of Communications as well as senior officials of the Department held on 23 July 2004. Subsequently and to date another 5 meetings have been held with Government representatives. The amount of progress made is very significant.

Issues initially tabled and mostly already resolved at this stage, included:

- Funding of the BEE proposed Council and related issues
- Scorecard format and methodology
- SoEs, especially in relation to the Ownership indicator
- Multinationals and progress reports on and outcome of negotiations
- Drafting, especially alignment with other governmental policies and regulations

A decision was taken to include ICASA as part of the Industry/Government bilaterals. This has also proven to be a good decision since the issues raised by ICASA almost invariably needs governmental sanction.

Although progress is slower, it is hoped that the discussions with Labour and Community will also pick up pace in the next few weeks leading up to the final document. In addition, ongoing discussions are in final stages with two other constituencies namely State-owned Enterprises and SMMEs to articulate specific details of their respective special treatment in the Charter.

The final document which will be handed over to the Cabinet, via our Minister, on 30 September 2004, will contain the comments which will be received in response to this Fourth Draft (**closing date 15 September**) as well as the finalised results of these various engagements with stakeholder constituencies.

Some of these talks, especially around the composition and nominations of as well as appointments to the ICT BEE Council, may proceed well into the five month period between 30 September 2004 and commencement date of the Charter, being 1 March 2005.

Content

Turning now to the issues of content, this Fourth Working Draft is presented as the last bite of the cherry in respect of soliciting input from the wider constituency. A special appeal is made for attempting to limit to commentary to the new material rather than trying to lobby again for positions which have already been subjected to the rigorous process followed by the Working

Group in distilling “sufficient consensus” from the sea of submissions received.

The main advantage of the parallel process of discussions with external stakeholders is that this Fourth Draft already contains some elements of the emerging consensus between for example, Government and Industry.

As earlier indicated, a heap of useful inputs was received in response to the Third Working Draft. Every attempt has been made to accommodate all views. No doubt, we cannot keep everybody happy all the time on every single issue. What we hope to do is to produce a document that reflects our respect and gratitude to those stakeholders who have taken their time and resources to participate in this historical process.

Multinationals

The much publicised negotiations with the American Chamber of Commerce were long and somewhat robust. Happily, however, a negotiated solution was found. The Working Group has undertaken to address certain related issues of clarification validly raised by the multinationals at the signing of the agreement. Hopefully the draft addresses some of the issues raised in this regard.

Targets

The target ranges released in May have been moderated in line with some of the submissions received and vigorous debate within our Task Team, a body made up of the key industry leadership of our sector.

Once again we hope that the careful thought that has gone into this section will be reflected in the product. One of the most creative symbolic suggestions received was the idea of actually converting the scorecard and presenting it “upside down” in order to emphasise the importance of the indicators that have an impact on the wider society, on job-creation, on women, rural communities, small business enterprises as opposed to the narrower issues of equity ownership and executive and board participation. The latter are not necessarily unimportant, but invariably affect a fewer number of black people in the short term.

In line with the above philosophy, the weightings for the Ownership Indicator has been lowered from 20% to 15% with the 5 percentage points distributed to increase the DTI’s scorecard weightings for Preferential Procurement by (2%); Enterprise Development (2%) and Access to ICT's (1%). In relation to the Third Draft, the weighting for Enterprise Development has been increased from 7% to 12% following an overwhelming number of submissions asking for this increment.

Beneficiary base

A testing issue has been how to ensure that the empowerment of women forms an integral and key part of the Charter process. In this regard, we are grateful to Women in ICT (WICT) for its active participation in the Task Team and other structures of the Working Group.

Similarly, the youth constituency has ensured that the interests of young people, who make up the bulk of the unemployed, are not left behind.

Research indicates that people with disabilities make up approximately 4% of the population and the sector is capable of absorbing them in large numbers into the mainstream of economic activity.

To balance the interests of these groupings has been no mean feat. We invite frank and honest comment of these important issues.

Acknowledgements

Finally, it remains for me, on behalf of the tireless volunteers in the Working Group who have spiritedly undertaken this daunting task and have miraculously survived the taxing effect thereof on their working, personal and family lives. Words cannot describe the debt of gratitude your country and its future generations owe you. You are indeed the Dream Team!

Our sponsors are kindly acknowledged at the end of the document. I cannot mention them all but it would be remiss for me not to single out HP for the generous donation of office space, refreshments, stationery, computers, printers for the past nine months. The comings and goings of our members during working hours, on weekends, and in the early hours of the many mornings, should have already earned us the boot by now from any other self-respecting company. I don't know where Mthunzi Mdwaba found these people!

I also wish to thank our media consultants at The Communications Firm for being so tolerant in the face of open abuse by us.

Last but not least we thank the Government, the Minister of Communications, the not-so-new-anymore Deputy-Minister for their unwavering support and faith in us as well as the departmental officials ably led by Acting DG Phumelele Ntombela-Nzimande and her deputy Joe Mjwara, as well as Mandla Langa, ICASA Chairperson and his team. We also thank in advance the leadership of Labour and Community.

We dubbed our national roadshow in March following the launch of the First Draft as “Planting the Seeds. Without stretching the metaphor, we can safely call this phase “The Germination” – the end of the beginning is in sight!

Let us all in unison as sons and daughters of the soil, black and white, young and old, men and women shout our war cry:

HAMBA DIGITAL DIVIDE, WOZA TRANSFORMATION!!

Re a leboga, Baie dankie!

DALI MPOFU

CHAIRPERSON: ICT EMPOWERMENT WORKING GROUP

23 AUGUST 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

2. 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" refers to 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. In addition, such an enterprise must also be BEE accredited.
- 2.5. "Black people", "black persons" 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 at least commensurate management control by black persons. In addition, such an enterprise must also be BEE accredited.
- 2.7. "Black-empowered enterprise" means one that is at least 25.1% owned by black persons and where there is at least commensurate management control by black persons. In addition, such an enterprise must also be BEE accredited.
- 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. "Co-operatives" means an autonomous association of person united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprises organised and operated on co-operative principles;
- 2.13. "Council" or "ICT BEE Council" means the ICT Black Economic Empowerment Council envisaged in Chapter 7 of this Charter;
- 2.14. "DFIs" refers to Development Finance Institutions and means finance entities created or funded by a tier of government. These include, but are not limited to, the DBSA, IDC, Postbank, NEF, Land Bank, Khula, NHFC, the PIC, Umsobomvu Youth Fund, and the Provincial Development Corporations;
- 2.15. "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.
- 2.16. "Direct ownership" means ownership of an equity interest together with control over voting rights attaching to that equity interest;

- 2.17. "Disabled persons" means black persons who have a long-term or recurring mental or physical impairment which, inter alia, limits their ability to engage in economic activity;
- 2.18. "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:
- 4.18.1. imposes burdens, obligations or disadvantages; or
 - 4.18.2. withholds benefits, opportunities or advantages from, any person on one or more prohibited grounds
- 2.19. "Effective date" means the date on which the ICT Charter will become operational and binding on all sector stakeholders;
- 2.20. "Eligible 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;
- 2.21. "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;
- 2.22. "Enterprise Development" means the voluntary establishment of and / or support for existing new black SMMEs, black-owned and / or black-empowered enterprises as well as enterprises owned by marginalised groupings;
- 2.23. "ESOPs" refers to Employee Share Ownership Programmes;
- 2.24. "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;
- 2.25. "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.
- 2.26. "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.

- 2.27. "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;
- 2.28. "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;
- 2.29. "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);
- 2.30. "ICT Enterprise" means an enterprise that conducts business at any stage of the value chain of the sector;
- 2.31. "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;
- 2.32. "ISETT SETA" refers to the Information Systems, Electronics and Telecommunication Technologies SETA;
- 2.33. "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;
- 2.34. "Long-term" means 28 February 2015 by which date compliance on all the minimum requirements of the Charter is mandatory;
- 2.35. "MAPPP SETA" refers to the Media, Advertising, Publishing, Printing and Packaging SETA;
- 2.36. "Marginalised groupings" include women, workers, youth, people with disabilities and those living in rural areas.
- 2.37. "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;
- 2.38. "Mid-term" means 28 February 2010;
- 2.39. "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;

- 2.40. "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;
- 2.41. "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;
- 2.42. "SETA" means a sector education and training authority established in terms of section 9 (1) of the Skills Development Act 97 of 1998;
- 2.43. "Skills Development" means the process of enhancing individuals' specialised capabilities in order to provide them with career advancement opportunities;
- 2.44. "SMME" means a small, medium or micro enterprise as defined in the National Small Business Act 102 of 1996;
- 2.45. "SOE" or "state owned enterprises" is an enterprise, often a corporation, owned by government;
- 2.46. "USA" means the Universal Services Agency as established in terms of the Telecommunications Act (1996), as amended;
- 2.47. "Women" refers to any black person of the female gender;
- 2.48. "Youth" refers to any black person between the ages of 18 and 35.

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 (including certain aspects of Postal Services), 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.

- **The Competition Act 89 of 1998**

This Act 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.

- **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.

3.4. Consultation with ICASA

Consultation between ICASA and the ICT Empowerment Charter Working Group is currently under way to establish a standard mechanism for evaluating empowerment in the sector, with specific reference to the regulated sectors. ICASA has agreed to initiate a process of aligning the

definitions set out in the Charter with their own. Due to the critical role and mandate of ICASA in relation to the regulated sectors in respect of empowerment, ICASA should have direct representation on the ICT BEE Council.

This representation will ensure that the lines between the regulatory mandate of ICASA and the monitoring role of the ICT BEE Council are clearly defined.

3.5. 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.

3.6. 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:-

- 3.6.1. 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;
- 3.6.2. lack of co-ordination of initiatives aimed at addressing key issues such as skills shortages in certain areas;
- 3.6.3. 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;
- 3.6.4. 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
- 3.6.5. 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.
- 3.6.6. the provision of universal access to ICTs using technologies such as fixed and mobile telecommunications.

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.

3.7. Key Principles of the Charter

This Charter is based on the following underlying principles: -

- 3.7.1. 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;
- 3.7.2. it is a voluntary and inclusive industry initiative;
- 3.7.3. it is a transformation Charter as contemplated in the Broad-based BEE Act 53 of 2003;
- 3.7.4. it constitutes a framework and establishes the principles upon which BEE will be implemented in the ICT sector;
- 3.7.5. it outlines processes and mechanisms used to implement economic transformation in the ICT sector; and
- 3.7.6. 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.

3.8. Exemptions

Save as provided below, there shall be no blanket exemptions for any enterprise, company or entity from compliance with the provisions of this Charter.

The ICT BEE Council may, upon application, grant a Certificate of Permitted Non-Compliance ("the certificate") to any enterprise which: -

- 3.8.1.1. complies with the conditions specified in clause A3.6 below; or
- 3.8.1.2. is a wholly owned SOE; and /or
- 3.8.1.3. is an SMME's.

Any enterprise whose application in terms of this section is refused, shall be entitled to lodge and appeal with the ICT BEE Council.

In the case of SMME's the Council shall from time to time publish the criteria which must be met before a specific category of enterprises is exempted as well as the actual extent of such exemptions. In every other case, the certificate shall be issued in relation to a specific ICT enterprise whose application is granted.

The Working Group must ensure that current bilateral discussions with organisations representing SMME's and SOE's are concluded by 15 September 2004. These consultative discussions are aimed at clearly articulating the processes by which and the criteria against which these entities may obtain a Certificate of Permitted Non-Compliance.

CHAPTER 4

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 economy 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: -

- 4.2.1. give effect to its objectives;
- 4.2.2. give effect to section 4 of the Growth and Development Summit of 2003;
- 4.2.3. comply with the provisions of Section 2 of the Broad-based BEE Act 53 of 2003; and

4.2.4. comply with the Constitution of the Republic of South Africa.

CHAPTER 5

CORE ELEMENTS OF THE CHARTER

5. 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. The ICT BEE Council will conduct such research.

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.

For the purposes of this Charter the key elements or criteria for the equity ownership BEE indicator are:-

Control which is directly related to voting rights attaching to the shares acquired; Sharing of risk and reward directly related to capital growth and depreciation (loss); and any other legal rights of a shareholder according to South African law.

Objectives

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

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.)

- increase the number of black people, including black women and other marginalised groupings who directly own and control existing and new 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 targets for levels of shareholding held by black people including black women in ICT companies operating in South Africa;
- encourage the notion of collective ownership through co-operatives and other similar structures; and
- provide a standardized definition of ownership.

Challenges and Recommended Solutions

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

- **Challenge: Funding** – This is one of the major challenges facing black people wishing to acquire equity in ICT enterprises.
 - **Access:** Funds are available for developmental financing in both the private and public institutions such as DFI's. However, black people have difficulty accessing such funds as a result of a lack of information and the requirements for funding. 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. Traditional requirements for funding have therefore themselves become stumbling blocks for financing BEE transactions.
 - **Mechanisms-** In many instances, terms associated with funding mechanisms are usually restrictive, and as such, limit the economic benefits flowing to black participants.

- o **Cost** – 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.
- o **Lack of Institutional Capacity** – In some instances, agencies entrusted with the disbursement of funds for BEE do not have sufficient capacity and expertise to implement such policies. This, in turn, results in funding earmarked for BEE transactions to not be allocated or used as intended.

Solutions: DFI's 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. The problems relating to funding, criteria for funding and the lack of capacities within the institutions which control such funds must be addressed, as this sometimes leads to funds being unutilised.

It has been submitted that the ICT BEE Council must make proposals to the Department of Labour (DOL) as to how unutilised 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.

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.

- **Challenge: Non-recognition of Empowerment Goodwill** – In the valuation of companies targeted for BEE transactions for the purposes of determining the price for shares, no recognition is generally accorded to the intangible enhancement of value brought about by the mere fact of complying with BEE requirements.

Solution: 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. The BEE Council in consultations with academics and the financial sector, amongst others, must develop guidelines on how to treat this type of goodwill and make provision for its considerations.

- **Challenge: 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 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”.

Solution: Guidelines regarding valuation methods and due diligence processes to determine the value of BEE investments must be designed by the ICT BEE Council.

- **Challenge: Shareholder Agreements-** In some instances, terms contained in shareholder agreements may be used to limit ownership and control by black participants. This sometimes owes to the inherent uneven bargaining positions of the parties to a particular BEE transaction.

Solution: In the process of conducting accreditation, the ICT BEE Council must ensure that shareholder agreements are scrutinised with the view to eliminate such practices.

- **Challenge: '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.

Solution: 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 from amongst its members, an Anti-Fronting Sub-committee which may co-opt other specialists with expertise in the areas of company law, corporate finance, auditing, and HR development.

It has also been recommended that anti-fronting guidelines need to be developed in conjunction with other stakeholders including a mechanism for blacklisting companies and individuals engaged in fronting.

Where fraud or other criminal activity is suspected, the ICT BEE Council must refer the matter to the appropriate law enforcement authorities.

Whistle-blowing in this area by concerned parties including potential partners, employees, competitors and customers must be encouraged by means of a hotline established by the ICT BEE Council.

- **Challenge: Foreign-based ICT enterprises** – Some foreign owned and controlled ICT enterprises (mainly American multinationals) submitted that, due to the stringent ownership restrictions from their parent companies and the need to preserve intellectual property, amongst others, it was difficult to dilute their ownership. Certain sections of the industry were vehemently opposed to any specialised treatment of multinationals in respect of this issue. Due to this polarisation, it became necessary for the Working Group to mediate a negotiated solution.

Solution: The negotiation process has resulted in the following consensus position:

1. The key elements or criteria for the Ownership BEE indicator are as stated above in the Overview of this section.
2. There will be no blanket exemptions for any organisation from the requirement to comply with the equity provisions and targets contained in this charter.
3. Subject to satisfying the conditions contained in paragraph 4, 5 and 6 below and on a case by case basis, the ICT Charter BEE Council may upon application permit any company, including a multinational company, specifically defined terms of release from complying with the equity

- 4.1. legal, technological or policy barriers which are incompatible with the sale of equity in the ordinary course of events; or
 - 4.2. any other such impediment(s) shall be permitted to propose alternative equity models, provided that such models: -
 - (a) are proposed in a genuine effort to overcome the barrier(s) in question; and
 - (b) fulfil the transformational purpose of equity ownership (i.e. voting rights, etc)
5. In the event that -:
- 5.1. the barriers are found to exist; and
 - 5.2. no alternative model(s) are proposed or found to be capable of overcoming such barriers,
- then the Council may issue the company involved with a Certificate of Permitted Non-Compliance.
6. The certificate contemplated in paragraph 5 above shall only be granted if it is shown that the barrier in question was not put in place mainly for the purpose of avoiding compliance with this charter or similar transformational instrument and in the case of parent - company policy if such policy is shown to-
- 6.1. have existed prior to 25 June 2003
 - 6.2. and be globally and uniformly applied by such parent company
7. Barriers only related to the ordinary costs of entering into an empowerment deal shall be specifically excluded from the dispensation contemplated in this section of the Charter.
8. In the event that a company is issued with a Certificate of Permitted Non-Compliance, then it will be allocated a score of zero in relation to the equity / shareholding indicator of

the scorecard and will accordingly be permitted to attain its bronze, silver or gold rating by adding up its total score on the remaining indicators.

9. The Council shall, from time to time and subject to maintaining confidentiality of the parties involved, publish for general information various barriers and equity models submitted to it in this regard, indicate whether these were accepted or not and state the reasons for its decisions.

10. The Working Group must ensure that the context within which consensus was reached in respect of this section is properly and timeously communicated to the Council as soon as the latter is established.

- **Challenge: State Owned Enterprises (SOEs)** – The Charter should provide specific guidance as to the empowerment status of SOEs with particular reference to the equity ownership indicator. 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.
 - when 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; and
 - The government shareholding must be excluded for the purposes of computing BEE ownership.

Counter submissions recommended the following:

- Government shareholding should be computed as empowerment equity to the extent that the South African government represents a majority of the population which is black;
- A differentiated treatment of SOE's should be made in the Charter along the following lines:
 - Wholly SOE that provide regulated public services

- Wholly SOE that provide unregulated public services
- Wholly SOE that provide unregulated commercial services
- Partly SOE that provide regulated public services, and
- Partly SOE that provide unregulated commercial services.

Solution: As a general rule, for SOEs to qualify under the equity section of the Charter, the scorecard target need only be achieved in relation to the non-government total shareholding. The exception to this general rule shall relate to SOEs which conduct business in competition with other commercial enterprises in the sector. In this case such SOEs shall be compelled to partner with other BEE enterprises when tendering for contracts and, collectively, need to meet a combined minimum black equity ownership as stipulated in the equity section of the scorecard.

In the case of wholly-owned SOE's and on a case-by-case basis, enterprises shall have to apply for a Certificate of Permitted Non-Compliance from the ICT BEE Council. Each such certificate will be tailored for the specific circumstances of the applicant in respect of the manner in which the equity points will be made up.

The process by which the Certificate of Permitted Non-Compliance will be issued is to be determined between the ICT Empowerment Working Group and the SOE's, and will be tailored along the lines adopted for the Multinationals.

- **Challenge: 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.

Solution: 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 enterprises.

- **Challenge: Broad-based collective ownership** – The ownership element of BEE is inherently prone to benefit only a handful of black people external to the enterprise and mainly resident in the large cities.

Solution: Extra points should be awarded to enterprises for the inclusion of broad-based mechanisms that seek to involve employees such as ESOPs, rural community participation, geographic and gender spread. Broad-based equity should include a gender and geographic spread to avoid a situation where only black men and people from specific provinces benefit. It is also 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.

Other broad based mechanism such as retail schemes specifically aimed at black people should also accrue extra points for enterprises. The principle as applied in Telkom's Khulisa and other retail schemes need to be encouraged.

- **Challenge: Direct versus Indirect Ownership** – There has been debate within the industry as to the advisability of including both direct and indirect forms of ownership in achieving the required score for the equity component of the scorecard. The inclusion of an indirect ownership element has been criticised for the inherent weakness of not conferring real and direct influence on the operational direction of the "empowered" enterprise.

Solution: Subject to the definition of indirect ownership contained in the definition section of this Charter, only direct ownership will be considered in computing the score for the equity component of the scorecard.

- **Challenge: Limitations on BEE Shareholding** - The issue where a BEE shareholder sells shares on the open market or to a non-BEE third party must be addressed. Concern has been raised regarding the effect such a transaction would have on the points accrued as a result of the original deal.

Solution: Where a BEE shareholder sells shares in the open market or to a non-BEE third party, the original enterprise 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.

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 formulated by the ICT BEE Council for inclusion in all BEE agreements entered in the industry.

Challenge: Impact of Large Equity Deals – Cognisance needs to be taken of the relative complexity and impact of large equity transactions in respect of the intended black partners' ability to raise the required capital. Recognition also needs to be given to the fact that that when it comes to certain size of BEE deals, the economic impact cannot simplistically be measured by reference to percentages alone.

Solution: Any company which is independently valued at more than R4bn and has declared an intention to enter into an equity deal in its own right, may, upon application to the BEE council and at the Council's discretion, be granted a customised and / or extended schedule in respect of the ownership indicator. Generally, such extended schedule must result in the long term target still being met on the 28 February 2015.

In each case that such an extended schedule is granted or refused, the BEE council must in its Annual Report, issue a summary of the

facts and its decision. The decision of the council in this regard shall be final and binding. A creative dispensation should be found to accommodate this reality.

Challenge: Deferred Ownership – Certain models which have been used to satisfy the equity ownership element tend to be structured with the inherent weakness that the vesting of share ownership is based on a future uncertain event the achievement of which is not within the powers or control of the black partners. On the other hand, it is acknowledged that the acquisition of voting rights, which should happen upfront, is not necessarily attained with the vesting of economic benefits.

Solution: Any transaction which involves black people acquiring shares on a conditional, deferred basis, dependant on the happening of a future uncertain event shall not be scored upfront for the purposes of this section until the happening, or otherwise of the event.

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 the boards of ICT companies;
- increase the number of black people, especially the youth, given opportunities to be fast-tracked into senior management positions;

Challenges & Recommended Solutions

The following are some of the major challenges facing the sector as well as their respective recommended solutions:-

- **Challenge: Lack of meaningful participation by blacks at management level** – Most management positions are still occupied by whites.

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

Solution: Black management development programmes need to be made more widely available, affordable and easily accessible. This will ensure that a larger pool of black managers is available to draw from.

- **Challenge: ‘Window-dressing’** - Some companies tend to be opportunistic and rely on ‘window-dressing’ as a mechanism of addressing management at operational level. This practise 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*”.

Solution: The ICT BEE Council should scrutinise the employment conditions of black executives in the sector including such issues as job description, remuneration, and level of responsibility.

- **Challenge: ‘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.

Solution: One of the possible ways 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.

- **Challenge: Succession Planning** – There is evidence of a lack of succession planning and mentoring in the ICT industry.

Solution: When developing employment equity plans and reports, enterprises need to provide details regarding succession planning and mentoring programmes.

- **Challenge: Under-employment** – Black managers are appointed into positions where their skills and qualifications are not fully utilized.

Solution: It is recommended that companies avoid this practice, and where it has been brought to the attention of the ICT BEE Council, it should be referred to the appropriated authorities for action.

- **Challenge: 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.

Solution: A clear distinction needs to be made when shares are pledged as security as opposed to when they are ceded. Further, 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.

5.3. Employment Equity

5.3.1 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. Employment Equity will 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 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

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

5.3.2 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;
- place specific focus on the participation of black people, including black women, the youth and people with disabilities, in the first line decision making positions; and
- ensure black people, including black women, the youth and people with disabilities participate at all levels of management in enterprises, especially at the operational level.

5.3.3 Challenges and Recommended Solutions

The following are some of the major challenges facing the sector as well as their respective recommended solutions: -

- **Challenge: 'Window-dressing'** - Some companies tend to be opportunistic and rely on 'window-dressing' as a mechanism for meeting employment equity targets.

Solution: Companies should develop set measurement criteria for performance measurement outcomes with clearly defined job descriptions and tasks, and accompanied by an appropriate budget, where applicable. This will ensure that candidates are not placed in positions or created structures that give false impressions of their positions. Window dressing should be regarded as a form of

fronting and should be dealt by the proposed Anti-Fronting sub-Committee of the ICT BEE Council.

Challenge: Line versus Support functions – Black employees are often appointed into support and administrative functions, which are peripheral to the core business operation.

Solution: Companies should identify strategic positions / jobs which are imperative to the survival of their organisations. These positions should then be prioritised for black EE candidates.

Challenge: “Diversity Management” – 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”.

Solution: Induction programmes which incorporate diversity management and gender sensitivity programmes should be implemented to addresses cultural and other differences within organizations and must include transformation in the workplace.

Challenge: “Non-regulated enterprises” – Enterprises employing less than fifty people have no legal obligation under the Employment Equity Act to submit Employment Equity (EE) 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.

Solution: Non-regulated companies should be encouraged to submit EE data on a voluntary basis so as to improve the quality of sector statistics.

5.4. Skills Development

5.4.1 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, blacks occupy the overwhelming majority of semi-skilled and non-skilled positions whereas whites occupy most highly skilled and specialist positions in the sector.

Due to lack of commitment there is a tendency among certain enterprises to view skills development as an onerous exercise and to

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

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.

5.4.2 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;
- increase the number of black skilled 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;
- ensure that BEE accredited ICT companies comply with the requirements of the Skills Development Act, irrespective of size of the enterprise;
- co-operate with the relevant regulatory authority in the commercialisation of training institutions and programs in the ICT sector, especially those causing over-supply of specific skills in the sector;
- set clear and precise guidelines over and above the existing statutory requirements, for effective skills development initiatives specifically aimed at historically disadvantaged individuals;
- set annual guidelines for the number of learnerships required to be registered in each sub-sector of the ICT sector; and
- 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.

5.4.3 Challenges and Recommended Solutions

The following are some of the major challenges facing the sector as well as their respective recommended solutions: -

Challenge: 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.

Solution: The DoL, Department of Education, Department of Science and Technology, South African Qualifications Authority and the SETA's applicable in this sector should work together in co-ordinating and aligning skills development programmes in the industry inline with the long term requirements of the industry working together with training providers and the tertiary education sector.

Challenge: '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.

Solution: The Education and Training Qualifications Authority of the SETAs are responsible and must be more effective in the monitoring of suspected or unaccredited training providers

Challenge: Accreditation of training providers: Cumbersome, red tape procedure by SETA's in awarding accreditation to training providers. **Solution:** The Seta's should fast track the process of accrediting qualified training providers. This should also include clear set of guidelines on the process, time frames and the requirements for compliant.

Challenge: Management Skills – shortage of black management skills, especially amongst women ICT professionals, must be addressed.

Solution: Companies should develop mentoring programmes that target black employees especially women in identified positions for succession planning.

Challenge: Maths and Science - The shortage of Maths and Science students at secondary school is limiting career opportunities for students in the ICT sector.

Solution: ICT career awareness programmes should be implemented at Primary and Secondary Schools levels. Schools should also be invited to academic institutions open days, private company visits and DOE, DST, NSTF programmes that promote career opportunities in Maths and Science.

Challenge: Funding for high level training - Currently there is no allocated funding for learnerships, internships and skills development programs beyond NQF 5.

Solution: The ISETT SETA, National Skills Fund and other relevant funding bodies should set aside funding for high level training even if it is not unit standard based.

Challenge: Experiential Training - Companies that provide Experiential Training can not claim back from SETA's as part of their skills development programme.

Solution: The SETA's should assist companies that provide experiential training to university graduates in recognising and accrediting their training within the learnership framework.

Challenge: Access to training on other learnerships outside ICT - Companies in the ICT sector find it difficult to access training on learnerships offered under the auspices of other SETA's.

Solution: The ISETT & MAPPP SETA's should conclude agreements with other SETA's to provide additional training.

Challenge: Retention of ICT skills within the sector - Often due to redundancies and retrenchment, valuable ICT skills are lost.

Solution: Companies should identify areas where market growth is declining and jobs could be at risk. Measures should be placed timely to develop and move staff to the new growth areas, by training and re-skilling employees working in business areas.

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. It is vital that procurement decisions are made on the overall performance of the supplier's BEE accreditation and not just on the ownership category.

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-empowered enterprises;
- provide incentives for enterprises to procure from (respective sectoral) Charter compliant enterprises thus ensuring the domino effect of affirmative procurement is realised throughout the economy;
- use affirmative procurement as a means to ensure that ICT and other skills that would otherwise be lost through instances such as retrenchments are still made available to the sector and the economy;
- promote the use of South African products and intellectual property in line with the principles of the Proudly South African campaign; and
- establish a coordinated framework for the implementation of black supplier development programs.

2

3 Challenges & Recommended Solutions

The following are some of the major challenges facing the sector as well as their respective recommended solutions: -

- **Challenge: Peripheral and non-core procurement** – Black suppliers are often appointed to supply only peripheral products and services.

Solution: It should be a pre-condition of compliance with the condition of the scorecard that the majority of the core procurement spend should be directed to black suppliers.

- **Challenge: 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.

Solution: The ICT BEE Council needs to address this issue.

- **Challenge: 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”.

Solution: 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. The use of sub-contractors is to be encouraged, where appropriate, particularly in the procurement of services such as installation, cabling, maintenance and support.

- **Challenge: 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.

Solution: 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.

- **Challenge: Preferential Payment Cycles** – black companies, particularly black SMME’s, are generally not offered preferential payment cycles resulting in adverse cash flow positions.

Solution: 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. Points will

be awarded for policies stipulating a maximum payment period of thirty days or less.

1• **Challenge: Improved Delivery Mechanisms** – Government and SOEs are responsible for the procurement of the majority of ICT products and services in the country.

2 **Solution:** Agencies such as SITA will not only undertake to achieve the highest possible compliance with this Charter but will recognise that they have a special role to play as Government is the single largest purchasing entity in the sector. This should equally apply to all SOEs active in the ICT sector.

3• **Challenge: 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.

Solution: 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. The ICT BEE Council needs to take up this issue.

4• **Challenge: 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.

Solution: Enterprises who are found to be abusing SMMEs need to be black-listed. Further, organisations such as the ICT SMME Forum should be encouraged to play an active role in ensuring that SMMEs are protected from this abuse.

In addition, it must be a precondition for scoring any points in respect of this indicator that 30% of eligible procurement spend be directed at black-owned SMMEs.

5• Challenge: 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.

Solution: 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.

6• Challenge: 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.

Solution: 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.

7• Challenge: 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.

Solution: 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

1• Challenge: Procurement Commitments Monitoring at All Levels

– It is submitted that where large tenders, involving black SMMEs are awarded, a monitoring mechanism be put 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.

2 Solution: A special procurement accreditation and monitoring sub-committee should 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.

3• Challenge: 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.

4 Solution: 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, and ensuring that there is a limitation on the money that flows out of the country.

5• Challenge: 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.

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Solution: 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.

- **Challenge: Increased Access to Procurement Opportunities By Black SMMEs and Black Engendered Enterprises** - for historical and practical reasons, black SMMEs and engendered enterprises find it difficult to access procurement contracts from large enterprises and government.

Solution: Some procurement managers have stressed the need for set asides for Black SMME's and for Black women owned enterprises. This suggestion also includes the possibility of set asides for youth participation. This issue is best dealt with by including appropriate questions in the Supplier Questionnaire.

Challenge: Procurement Emphasis – there seems to be greater emphasis or reliance on equity when procurement considerations are made. This, to the exclusion of other key pillars of BBEE.

Solution: 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.

- **Challenge: Procurement spend allocated black-owned SMMEs** - The transformation of established white owned companies into empowered companies is seen as posing a threat to the development of black owned 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.

Solution: The scorecard should cater for set asides for SMME's to remedy this problem.

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, including the targeting of entrepreneurial skills development for the youth;
- 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, ensuring that such activities are regional and engage with marginalised communities; and
- create employment.

2Challenges & Recommended Solutions

The following are some of the major challenges facing the sector as well as their respective recommended solutions :-

- **Challenge: 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.

Solution: This challenge has been addressed in the Affirmative Procurement section.

- **Challenge: 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.

Solution: Incubation should be considered as another option to develop sustainable 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.

- **Challenge: Lack of Entrepreneurial Culture/Job seeking mentality** – Black people were channeled by the Apartheid psyche to enter the job market over and above being encouraged to develop their own businesses.

Solution: Formal and informal entrepreneurship programmes need to be introduced by the sector.

- **Challenge: 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.

Solution: When properly applied, skills development, training and mentoring should also be directed to address lack of management skills. However, management experience can only be gained over time.

- **Challenge: 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.

Solution: Partnerships must drive enterprise development through the entire supply chain by transferring business knowledge and skills that are 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 and repayment of loans, if any. Enterprises should be encouraged to bring offshore business to South Africa, through identifying development work, BPO and call centre functions that can be transferred to South Africa.

- **Challenge: 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.

Solution: 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. Although the strategy is aimed at developing the ICT sector, it is recognised that certain enterprises may be better placed to develop enterprises in other sectors. Such developments should be encouraged, especially if they support the development of the value chain relevant to the ICT sector.

Price matching, a practice where certain commodity prices are set at a competitive level and benchmarked to ensure supplier sustainability and to discourage price war, need to be considered in favour of SMMEs. Special assistance should be provided to SMMEs by organisations that issue tenders during the tendering process. This is intended to increase the participation and capacity to meet the tender requirements by black SMMEs.

It is a precondition for achieving any score in respect of this indicator that at least 30% of the eligible procurement of an enterprise be directed at black-owned SMMEs.

- **Challenge: 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.

Solution: The effective application of the procurement guidelines within this Charter will incentivise the development of all BEE enterprises regardless of size.

- **Challenge: 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.

Solution: The ICT BEE Council should establish a database of all relevant information in this regard

- **Challenge: Insufficient support** is received from government and quasi governmental enterprises for local manufacturers and their products.

Solution: Incentives offered by the DTI and National Treasury must not be discriminatory towards locally based enterprises.

- **Challenge: 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.

Solution: Proportion of total procurement spend and jobs created are deemed the most fair measurement criteria.

- **Challenge: Financial Management Education** - It is submitted that financial management education and training pertaining to SMMEs and potential entrepreneurs is lacking. 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.
- **Solution:** 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.

5.7 Access to ICTs and Corporate Social Investment

Overview

Whereas the DTI's Broad-based Strategy document makes provision for points to be set aside for what it refers to as "Residual", wherein "Residual" is referred to as that portion of a sector's scorecard which allows each sector to tailor the scorecard to their individual circumstances, the ICT sector 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.

These industry specific initiatives will be accredited by the ICT BEE council and has been translated into the scorecard as "*investment in sustainable ICT council accredited projects aimed at accelerating access to ICT and training...*" This indicator will also carry a higher weighting because it will concentrate on industry specific initiatives that contribute to bridging the digital divide.

However, recognising that enterprises wish to retain autonomy over how money is spent a second indicator has been incorporated in the residual category as "*general CSI*". General CSI must be interpreted in the widest possible sense to incorporate philanthropy and altruism. It is however recommended that companies invest in projects that are national priorities such as HIV/Aids, crime prevention, the youth etc.

The charter will in addition recognise in kind contributions in respect of both indicators that are capable of being translated into a monetary value.

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 and Recommended solutions

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

- **Challenge: Absence of supportive infrastructure** – Projects aimed at bridging the digital divide can only be implemented in conjunction with other providers of infrastructure such as buildings, electricity, roads, etc

Solution: The ICT BEE Council must co-ordinate/liaise with the various government departments such as the Department of education, Public works, Public service and Administration responsible for public infrastructure such as roads etc

- **Challenge: Lack of Co-ordination** – Lack of co-ordination results in duplication of resources and clamouring for limited resources by NGO’s.

Solution: The ICT BEE Council through the accreditation process will ensure that resources are not duplicated.

- **Challenge: Burden on SMMEs** – A key issue in respect of this and other BEE indicators is what special dispensation needs to be granted to SMMEs so as to enable them to play a meaningful role in bringing about economic transformation whilst not being strangled by over-regulation.

Solution: A healthy balance needs to be struck between competing national policy priorities. Whilst enterprises are encouraged to contribute to transformation and economic growth, the need to grow a vibrant SMME sector as a catalyst for job creation and economic growth is also crucial.

It is therefore in this regard that SMMEs be exempted from directly executing ICT CSI projects. However, instead of the stipulated 1.5% contribution by other enterprises, SMMEs are required to

contribute 0.75% of PBT to a dedicated pool of funds that will, for example, be used to assist rural SMMEs or co-operatives.

- **Challenge: 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.

Solution: Accredited projects will be closely monitored by the ICT BEE Council. Any such project must have an integrated plan and be properly coordinated such that it involves all stakeholders so as to optimise the intended benefits and impact.

- **Challenge: 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.

Solution: The measurement for the first indicator (a) is PBT. SMME's will only make a contribution to this indicator if they in fact make PBT. Even where they do, they may still experience problems in respect of actively contributing to accredited projects in respect of time and capacity. In order to resolve this difficulty the ICT BEE Council must select an existing fund(s) such as the USF into which SMME's will make their 1% of PBT contribution. This will enable SMME's to make a financial contribution to accredited projects without necessarily having to execute projects because of a lack of capacity.

The nature of an SMME enterprise presents challenges in relation to general CSI ((b) indicator). As already indicated SMME's may experience funding and capacity problems in executing general CSI. SMME's cannot therefore be expected to make a contribution to general CSI and will therefore not have to comply with this indicator.

- **Challenge: 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'.

Solution: Industry specific initiatives will be accredited by the ICT BEE council and has been translated into the scorecard as *"investment in sustainable ICT council accredited projects aimed at accelerating access to ICT and training..."* This indicator will also carry a higher weighting because it will concentrate on industry specific initiatives that contribute to bridging the digital divide.

Accredited projects will not only focus on the rollout of infrastructure but include training and development of relevant applications, recognising that training and the development of relevant applications is important to ensure the effective usage of the technology and infrastructure._

- **Challenge: 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.

Solution: The charter recognises that enterprises wish to retain autonomy over how money is spent. A second indicator has been incorporated in the residual category as *"general CSI"*. General CSI must be interpreted in the widest possible sense. It is however recommended that companies invest in projects that are national priorities such as HIV/Aids, crime prevention or youth development.

- **Challenge: CSI Measurement** – The standard of measurements i.e. whether targets should be set as % of profit after tax ("PAT") or profit before tax ("PBT") or even revenue has been a point of debate. 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.

Solution: There has been some discussion regarding whether PBT or PAT is the more appropriate measure. However, as PBT from an accounting perspective is the more fair measurement and a more accurate reflection of a companies performance, PBT has been adopted as the measurement.

Enterprises that do not make a PBT cannot conceivably be compelled to make a contribution to the residual category. In such

a case companies will reflect their contribution as 1% of 0 PBT and be allocated the full points for the indicator. Enterprises, when assessing what their 1% of PBT spend is will have regard to PBT in the preceding financial year. _

- **Challenge: Requirements for accreditation** – Criteria will have to be defined for both new and existing projects to be accredited.

Solution: The industry has agreed on the following goals which will require accredited projects:

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 of 2014. In this regard, by 2012 no South African learner should be less than a 10km radius away from such access to ICT infrastructure. This programme should be undertaken in collaboration with other bodies such as government, NGOs and existing projects such as the Khanya Project (Western Cape) Kingdom Online (KZN) and the Gauteng Department of Education's Gauteng Online Project.

The ICT BEE Council must focus on projects that support rural and marginalized communities, entrepreneurship and youth development with a special focus on young women.

The ICT BEE Council may accredit existing and new projects. Enterprises may apply to the Council to have projects accredited. The Council must take the following criteria into account when considering accrediting projects:

- Projects must support national priorities;
 - Projects must adopt a partnership approach, involving government and recipient communities to support sustainability;
 - Similarly, the project design must adopt a consultative approach, be sustainable; be driven by empowerment of recipient communities and have monitoring and evaluation tools to assess the impact and return on investment; and
 - Projects must provide for a rigorous, intensive and a structured skills development component.

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. The balanced scorecard method applies, that is, the total score should be calculated by adding up the scores separately computed in respect of each indicator.

6.1 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.

6.2 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.

6.3 Targets

The targets are divided into two terms namely mid-term (MT) and long-term (LT) as defined. The principles and targets contained in this Charter will be applied from the effective date (1 March 2005) and shall remain applicable even beyond the long-term date (28 February 2015).

For the first five (5) years of the operation of this Charter (i.e. 2005 to 2010) an annual minimum total score (AMTS) for each particular year must be attained, as specified in the table below. Failing which, an enterprise will be classified as "un-empowered".

COMPLIANCE/ REPORTING PERIOD	AMTS
1/3/2005 to 28/2/2006	45% - 50%
1/3/2006 to 28/2/2007	51% - 65%
1/3/2007 to 28/2/2008	66% - 79%
1/3/2008 to 28/2/2009	80% - 99%
1/3/2009 to 28/2/2010	100%

Any enterprise which:

- attains the AMTS will be awarded a “Bronze Certificate of Empowerment” by the ICT BEE Council; or
- exceeds the AMTS by a factor not less than 25% will be awarded a “Silver Certificate of Empowerment” by the ICT BEE Council; or
- exceeds the AMTS by a factor not less than 40% will be awarded a “Gold Certificate of Empowerment” by the ICT BEE Council; or
- exceeds the AMTS by a factor of 50% or more will be awarded a “Platinum Certificate of Empowerment” by the ICT BEE Council.

The ICT BEE Council shall determine the AMTS formula for the Long-Term (LT) targets (i.e. 2010 to 2015). In doing so, the Council shall take into consideration the collective views of the sector as expressed in its periodic reviews of the Charter.

6.4 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.

6.5 Minimum score

To the extent that there shall be no exemptions on any of the Core Components of the scorecard, a minimum score of 40% needs to be obtained for each indicator before any certificate of empowerment may be awarded.

6.6 Bonus points

In respect of all scorecard indicators it is possible to earn bonus points in excess of the minimum score stipulated in the scorecard. Criteria for earning bonus points are set out in the scorecard. In all instances these bonus points are aimed at *incentivising* enterprises to broaden the effect of their transformation programmes to include: -

- SMME’s;
- Rural communities;
- Disabled persons; or
- Black recipients of ICT skills development

No bonus points may be earned: -

- in respect of any indicator unless at least 50% of the score for that indicator is attained;
- by an enterprise, which would otherwise have failed to qualify for a Bronze Certificate of Empowerment due to a low AMTS.

CORE COMPONENT	INDICATORS	MID TERM TARGET (2010)	LONG TERM TARGET (2015)	SPLIT Weighting in %	TOTAL Weighting in %
Indirect Empowerment Score					
A. Access to ICTs and Corporate Social Investment	a) Investment in sustainable ICT Council accredited projects aimed at accelerating access to ICTs & training for black people measured as a % of profits before tax ("PBT"); b) General CSI as a % of PBT. <ul style="list-style-type: none"> Bonus points capped at 20% of total score gained by locating an accredited project referred to in (a) above in a rural area. (This will be calculated at 10% per project per year.) 	1% of PBT 0.5% of PBT	1% of PBT 0.5% of PBT	8 3	11
B. Enterprise Development	Voluntary establishment and/or support of:- a) black-owned enterprises through financial and/or other means measured as a % of total procurement spend; b) black-owned or black-empowered enterprises through financial and/or other means measured as a % of total procurement spend; c) black-engendered enterprises, d) youth-owned enterprises; e) jobs created and sustainability of recipient enterprises. <ul style="list-style-type: none"> Minimum 30% of Enterprise Development must be directed towards black-owned SMME's. Bonus points capped at 10% of total score gained by including disabled persons with minimum 5% equity participation on any of the above. (This will be calculated at 1% bonus point per 1% disabled persons participation.) 	5% of total procurement spend	10% of total procurement spend	4 2 2 2	12

C. Preferential Procurement	a) Procurement of goods and services from black owned enterprises (as a % of eligible procurement spend);			10	
	b) Procurement of goods and services from black owned or black empowered enterprises (as a % of eligible procurement spend);			4	
	c) Procurement of goods and services from black-engendered enterprises(as a % of eligible procurement spend);			3	
	d) Procurement of goods and services from youth-owned enterprises(as a % of eligible procurement spend);	60%	80%	3	22
	e) Published favourable payment terms for black-owned SMMEs (less than or equal to 30 days).			2	
	<ul style="list-style-type: none"> • <i>Minimum 30% of eligible procurement spend must be directed towards black-owned SMME's for any points to accrue or be earned in respect of this indicator.</i> • <i>Bonus points capped at 10% of total score gained by including disabled persons with minimum 5% equity participation on any of the above. (This will be calculated at 1% bonus point per 1% disabled persons participation.)</i> 				

Human Resource Development and Employment Equity Score

D. Skills Development	a) Full compliance with Skills Development (SD) Act as certified by the relevant SETA;	a) 1% of payroll per SD Act	a) 1% of payroll per SD Act	3	
	b) Extra spend above statutory SD levy targeted at: -	b) 1% of payroll	b) 1% of payroll	6	
	i. black employees;			3	
	ii. women;			2	
	iii. youth;			1	20
	iv. disabled			1	
c) Provision of learnerships for unemployed learners;	c) 5% of staff complement	c) 5% of staff complement	2		
d) Provision of learnerships for current employees;	e) 5% of total SD budget	e) 5% of total SD budget	1		
e) Provision of executive development training programmes.			2		
<i>Bonus points capped at 30% of total score on (b) above, earned at 10% of points per extra 1% of payroll above target (b).</i>					

E. Employment Equity	a) Compliance with EE Act as certified by DoL or ICT Council; b) Achievement of set performance targets in respect of: - i. Black people in senior management positions; ii. Black people in other management positions; iii. Black women in senior management positions; iv. Black women in other management positions <ul style="list-style-type: none"> • Bonus points capped at 20% of total score for this indicator gained by doubling the targets as set out in (b)iii or (b)iv above. This will be calculated at a maximum of 10% for each sub indicator. 	100%	100%	3	10
Direct Empowerment Score					
F. Equity Ownership	a) % share of economic benefits as reflected by direct shareholding by black people; b) % share of economic benefits as reflected by direct shareholding by black women as a % of (a) above; c) % share of economic benefits as reflected by direct shareholding by youth as a % of (a) above; d) % share of economic benefits as reflected by direct shareholding by disabled persons as a % of (a) above; <i>Bonus points capped at 20% of total score gained by including broad-based collective ownership with minimum 10% equity participation on any of the above. (This will be calculated at 2% bonus point per 1% equity participation through broad-based collective ownership mechanisms.)</i>	35%	30%	10	15
G. Management and Control	a) % black people in executive management; b) % black women in executive management as a % of (a) above; c) % youth in executive management as a % of (a) above; d) % black people in board committees; e) % black women in board committees as a % of (d) above; f) % youth in board committees as a % of (d) above. <i>Bonus points capped at 10% of total score gained by including disabled persons with minimum 10% participation within any of the above. (This will be calculated at 1% bonus point per 1% disabled persons participation.)</i>	40%	60%	3	10

CHAPTER 7

THE ICT BEE COUNCIL

7. 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

- 7.6.1. The Council shall be the custodian of the ICT Charter;
- 7.6.2. 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;
- 7.6.3. The Council shall monitor and review the implementation of the Charter and all matters related thereto in the ICT sector;
- 7.6.4. 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;
- 7.6.5. 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.
- 7.6.6. 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;
- 7.6.7. 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;
- 7.6.8. 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
- 7.6.9. 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.

7.2. Composition of the Council and Appointment of Members

The Council shall consist of: -

- 7.6.1.a Chairperson, who shall be appointed by the Minister of Communications in consultation with the industry associations; and
 - 7.6.2. a Chief Executive Officer, who shall be responsible for the daily administration and operations of the Council; and
 - 7.6.3. 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. When appointing members in terms of the above regard shall be given to the need for the Council: -
- 7.3.1.1. to have appropriate expertise;
 - 7.3.1.2. to represent different relevant constituencies including trade unions, business, community organisations, etc.
- 7.4. In appointing members in terms of the above, appropriate consultative processes shall be followed.
- 7.5. 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.
- 7.5.1 The terms of office for members of the Council shall be determined after due consultation with stakeholders.

7.6. Powers of the Council

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

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



CHAPTER 8

THE PARTICIPANTS

8 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.



Black IT Forum



Computer Society of SA



Electronic Industry Federation



information industry south africa

Information Industry South Africa



Internet Service Provider Association



National Association of Broadcasters



National Community Radio Forum



ISETT SETA



South African Chamber of Business



South African Communication Forum



MAPP SETA





Independent Communications Authority of South Africa



State Information Technology Agency



Universal Services Agency



SA Non-Governmental Organisations Network



Communications Cabling Association of South Africa



Computer Technology Industry Association

The following entities contributed immensely by way of sponsorships in monetary and other forms during the process of developing the ICT Charter.



The following assisted with research co-ordination and fulfilment in one capacity or the other.





The ICT Charter

**HAMBA Digital Divide!
WOZA Transformation!**

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