



# Position Paper: Ending the BBBEE Framework and Advancing True Equality in South Africa (2025)

(Version 1.0)

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## 1. Executive Summary

After thirty-one (31) years of constitutional democracy, South Africa continues to operate under a race-based economic regime known as **Broad-Based Black Economic Empowerment (BBBEE)**. Initially conceived to remedy the segregation structural inequities, BBBEE has now evolved into an exclusionary instrument that perpetuates new forms of discrimination.

The **Liberty Fighters Network (LFN)** contends that the continued enforcement of BBBEE in its current form violates the **Equality Clause (Section 9)** of the **Constitution of the Republic of South Africa, 1996**, and undermines the

founding value of **non-racialism** enshrined in the **Preamble** and **Section 1(b)** of the Constitution.

LFN calls for the **complete repeal** of the BBBEE legislative and policy framework and for the establishment of a **non-racial, need-based empowerment system** benefiting all economically disadvantaged South Africans — irrespective of race, colour, or ancestry.

## **2. Background and Context**

BBBEE was introduced through the **Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)**, as authorised under **Section 9(2)** of the Constitution, which allows measures “designed to protect or advance persons disadvantaged by unfair discrimination”.

However, Section 9(2) does not create an indefinite mandate for race-based preference. The **Constitutional Court** in *Minister of Finance v Van Heerden 2004 (6) SA 121 (CC)* held that remedial measures must:

1. Target persons or categories of persons disadvantaged by unfair discrimination;
2. Be designed to protect or advance such persons; and
3. Promote the achievement of equality.

Importantly, the Court stressed that once equality has been substantially achieved, **continued differential treatment may constitute unfair discrimination.**

After three decades of democracy, the structural conditions used to justify BBBEE have shifted. Millions of South Africans of all races now experience poverty, while political elites — across racial lines — benefit disproportionately from BBBEE structures.

### **3. LFN's Constitutional Position**

LFN affirms that:

- **Section 9(1)** guarantees equality before the law for “everyone”.
- **Section 9(3)** explicitly prohibits unfair discrimination by the state on grounds including race.
- **Section 10** guarantees the right to dignity, which includes the right to self-identity free from state-imposed racial labels.
- **Section 1(b)** lists non-racialism as a founding constitutional value.

Thus, the continuation of BBBEE on the basis of segregation-era racial classifications contravenes the letter and spirit of the Constitution.

#### 4. On Racial Self-Identification and African Identity

LFN notes that the **Department of Home Affairs** no longer requires or stores racial classification in the identity document system. Where racial data exists, it is limited to archival records of parents' classifications. Consequently, there is **no reliable or lawful basis** for the state or private entities to determine an individual's race for BBBEE purposes.

Further, in a global context where personal identity — including gender and cultural affiliation — is recognised as a matter of self-determination, it follows that citizens may lawfully **self-identify racially or choose not to identify at all**.

LFN therefore asserts that all persons **born in Africa** are **Africans**, regardless of ancestry or pigmentation. To deny any South African citizen the right to identify as African is inconsistent with the **freedom of association (Section 18)** and **dignity (Section 10)** clauses of the Constitution.

#### 5. Why BBBEE Has Failed and Must End

1. **Entrenchment of New Discrimination:** BBBEE now excludes millions of South Africans solely on racial grounds, violating Section 9(3).
2. **Corruption and Elite Capture:** Multiple reports by, above others, the **Auditor-General** and **Public Service Commission** confirm that BBBEE

has largely benefitted politically connected elites rather than the poor majority.

3. **Economic Inefficiency:** Empirical data from the **National Treasury (2022)** shows declining foreign investment and productivity linked to procurement distortions.
4. **Social Division:** Instead of fostering reconciliation, BBBEE perpetuates racial resentment, eroding national unity envisioned in the Preamble.
5. **Administrative Impossibility:** Without reliable racial data, BBBEE verification relies on self-declaration and private certification — ripe for fraud and arbitrary enforcement.

## 6. LFN's Proposal for an Inclusive Future

LFN proposes that South Africa transition from a **race-based** to a **socio-economic-based empowerment model**. The new framework should:

- Focus on **poverty alleviation, skills development, and enterprise support** regardless of race;
- Prioritise **citizenship and residency** over ancestry;
- Encourage **voluntary mentorship and investment partnerships** across racial and cultural lines; and

- Promote a new ethos of **economic patriotism** — empowering South Africans as South Africans.

## 7. Conclusion and Declaration

After 31 years of democracy, BBBEE has fulfilled its historical purpose and must now give way to an era of *true equality*. Continuing race-based discrimination violates both the Constitution and moral conscience.

LFN therefore calls upon:

- The **Cabinet** to initiate legislative steps to **repeal the BBBEE Act** and replace it with an inclusive economic participation framework;
- The **Constitutional Court** to clarify that race-based remedial measures cannot persist indefinitely without fresh empirical justification; and
- All South Africans, regardless of background, to embrace their shared identity as **Africans** and to unite in building a non-racial, prosperous Republic.

“South Africa belongs to all who live in it, united in our diversity.” — *Preamble, Constitution of the Republic of South Africa, 1996*

