

# **AFFIRMATIVE ACTION IN NAMIBIA: CORRECTING WRONGS OR CREATING NEW BARRIERS TO ECONOMIC GROWTH AND EMPLOYMENT?**

**This report provides a critical analysis of affirmative action in  
Namibia, with a focus on the proposed Employment Equity Bill**

(Dated June 2024 – Presented as “*draft for consultation*”)

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This document was prepared by several experts in Law (including International Trade Law), Economics, Business Management, Corporate Governance, Risk Management, Financial Management, Public Governance and Futures Studies.

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<b>TABLE OF CONTENTS</b>	<b>PAGE</b>
<b>1. Executive Summary</b>	<b>3</b>
<b>2. Introduction</b>	<b>4</b>
<b>3. Economic Overview</b>	<b>6</b>
<b>4. Surveys on the Desirability of Affirmative Action in SA and Namibia</b>	<b>16</b>
<b>5. Analysis of the Employment Equity Bill</b>	<b>20</b>
<b>6. Patterns and Lessons from Malaysia and around the World</b>	<b>46</b>
<b>7. Unpacking The Employment Equity Commission's Reports</b>	<b>60</b>
<b>8. Conclusion</b>	<b>66</b>

## 1. EXECUTIVE SUMMARY

Namibia's affirmative action laws, introduced shortly after independence, aimed to correct historical injustices and build a more equitable society. However, more than 35 years later, the evidence suggests these laws — and especially the proposed new Employment Equity Bill — risk increasing unemployment and hamper economic growth.

This report critically examines the Employment Equity Bill against Namibia's economic realities. Despite good intentions, the Bill introduces a rigid, bureaucratic framework that threatens to stifle job creation, discourage investment, and deepen unemployment. Namibia's unemployment crisis has worsened significantly in recent years, with a broad unemployment rate now exceeding 50%, and youth unemployment reaching crisis levels. Economic activity outside of mining remains sluggish, and private sector growth is desperately needed to create jobs and generate prosperity.

Instead of removing barriers to business, the Employment Equity Bill creates new ones. It imposes complex compliance obligations, unrealistic demographic targets, intrusive state oversight, and harsh penalties on businesses — in a country where the supposed "target" group for affirmative action (white males) makes up less than 0.5% of the population.

Surveys conducted by EPRA among Namibian businesses show overwhelming opposition to the Bill. Business owners report that affirmative action laws already hamper investment, growth, and job creation — and that the proposed changes will only make matters worse. There is extremely limited evidence that these laws continue to serve a justifiable purpose. No government research appears to have been conducted to assess their real economic and social impact in the Namibian context.

Global lessons, including from Malaysia's and South Africa's decades-long affirmative action programme, show that poorly designed race-based policies risk entrenching political elites, fostering dependency, and undermining economic competitiveness.

Namibia urgently needs a new paradigm: one focused not on policing demographic representation through endless red tape, but on creating a dynamic economy where all

Namibians can succeed based on merit, ability, opportunity, and where there is real economic development and growth. Most importantly, those with the drive and ability to build businesses and create jobs must be empowered, not hindered — government should be a partner in their success, not an obstacle to their progress.

## 2. Introduction

Affirmative action remains one of the most debated social and economic policies in Namibia. More than three decades after independence, Namibia faces a critical question: has affirmative action fulfilled its promise of correcting historical injustices, or is it inadvertently creating new barriers to economic growth, employment creation, and social cohesion? This report critically examines the proposed Employment Equity Bill against the backdrop of Namibia’s constitutional framework, economic realities, and global lessons, with the aim of fostering a more inclusive, dynamic, and opportunity-driven society.

The Affirmative Action (Employment) Act No. 29 of 1998 (the “**Act**”) was promulgated in September 1998. The Act was (partially) brought into force on 18 November 1998 (by GN 278/1998, GG 1996) and fully implemented on 6 August 1999 (by GN 156/1999, GG 2161).

The Act introduced affirmative action policies in Namibia. Section 17(1) of the Act defines it as *“a set of affirmative action measures designed to ensure that persons in designated groups enjoy equal employment opportunities at all levels of employment and are equitably represented in the workforce of a relevant employer.”* It also established a regulatory body called the Employment Equity Commission (the “**Employment Equity Commission**”). It has now been in operation for more than a quarter of a century (about 26 years).

The Employment Equity Commission recently circulated a proposed second version of the Act and invited (limited) public consultations. The idea is to repeal the current Act in totality and replace it with new legislation, to be renamed the Employment Equity Act. It is still in draft form and is referred to in this report as the **Employment Equity Bill**.

The proposed Employment Equity Bill retains some provisions of the existing Act but also introduces wholesale changes. The Employment Equity Commission felt the changes were necessary because (in its own words):

*“...the Employment Equity Commission has, over the years in all of its annual reports, lamented that the pace of implementation of affirmative and transformation of the labour market is at a snail's pace. The present Act has not achieved serious consideration of employment equity in decision-making in the labour market. The approach to the implementation of the current Act so far has not generated the necessary urgency and momentum required to transform society and the economy. Fundamental adjustments are therefore required in the current affirmative action legal framework to ensure full and proper implementation, and that decisions and practices embrace the spirit and ethos of Employment Equity”.<sup>1</sup>*

EPRA cannot objectively assess whether the Employment Equity Commission's concerns are valid or hyperbole because its ability to generate annual reports is, ironically, progressing at a snail's pace. The last annual report was published back in 2017/2018.

EPRA published a comprehensive report on Namibia's affirmative action policies on 27 February 2023 (shortly after the threshold for employers having to comply with the Act was reduced from those employing 25 or more people to those employing 10 or more people).<sup>2</sup>

Based on the mentioned increasing restrictions on entities it seems no lessons have been learned.

It is important to state at the outset that no reasonable person opposes laws that prohibit discrimination. Namibia's Constitution is clear on this point. Article 10, titled “*Equality and Freedom from Discrimination*,” affirms that:

- All persons shall be equal before the law; and

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<sup>1</sup> Employment Equity Commission, Explanatory Memorandum, September 2024, Pages 1 and 2.

<sup>2</sup> The report is available at: <https://www.epra.cc/wp-content/uploads/2023/02/EPRA-Report-of-AAA-and-ESA-Regulations-FINAL.pdf>

- No person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed, or social or economic status.<sup>3</sup>

These constitutional protections are fundamental to a just society and should be upheld and defended by all. There should be no place for discrimination in modern Namibia (or anywhere else), especially 35 years after independence.

As some of the research data in this report indicates, affirmative action laws may have had unintended consequences. Rather than achieving their goal of empowering previously disadvantaged individuals, these laws may have contributed to a situation where the majority of such individuals — and their descendants — are worse off today, compared to when the laws were first introduced.

Does the Employment Equity Bill offer measurable and/or real economic and social value 35 years after Independence? Or does it simply introduce additional layers of bureaucracy and regulatory burden? These are the core issues this report will seek to examine.

Before commenting on the specifics of the Employment Equity Bill, a broad overview of Namibia's economy and unemployment situation is provided to illustrate that the country is in troubled waters, with regressive government policy likely being the main catalyst.

### **3. Economic Overview**

Acknowledgment is given to Cirrus Capital for their assistance in the following section.

#### **3.1. Unemployment**

Namibia Statistics Agency (NSA) released updated data for the first time in five years as part of the '23 Population and Housing Census, during which unemployment has significantly worsened. Namibia's working-age population was 1.88 million in '23, of these, 867,247 people were part of the labour force, either employed or actively seeking employment, while 1,008,875 were

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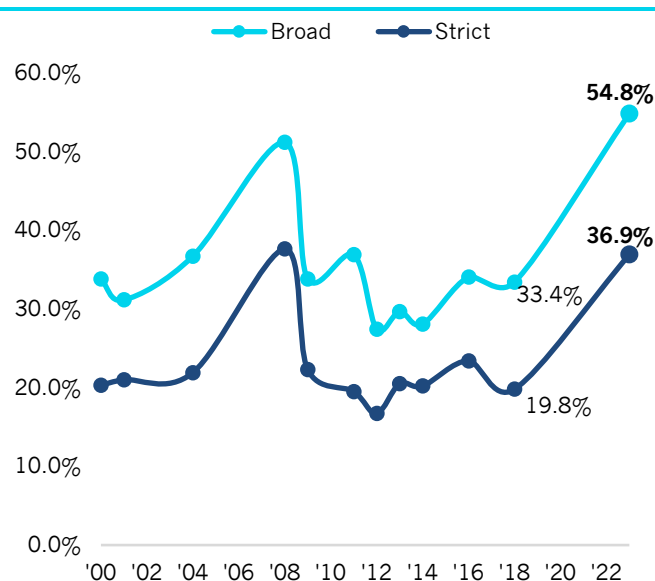
<sup>3</sup> See the caveat contained in Article 23 of the Constitution as discussed hereunder.

classified as “*outside the labour force*”. The NSA also identified a “*potential labour force*” of 341,931 individuals who were not formally classified as unemployed but were willing and able to work. The labour force participation rate fell sharply from 71.2% in ‘18 to 46.2% in ‘23, although the broad definition suggests it would be closer to 64.5% when accounting for discouraged jobseekers.

For the first time, the NSA used the “*strict definition*” of unemployment, based on active job seeking in the past seven days, as the headline figure. Under the strict definition, the national unemployment rate was 36.9%, up from 19.8% in ‘18. However, the broad rate of unemployment rose to 54.8% from 33.4% recorded in the last survey. The broader measure of unemployment paints a truer picture of true unemployment and remains the standard in most developing economies.

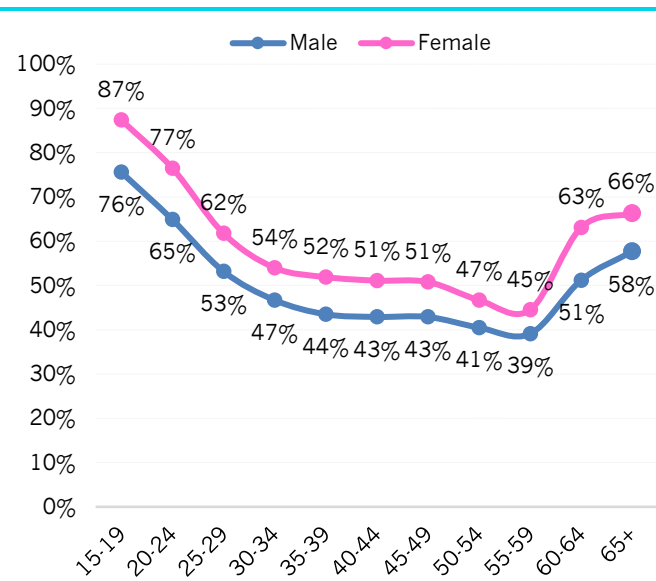
The female broad unemployment rate of 59.0%, is sizable higher than that of men, 50.6%. While the rural broad unemployment rate is 63.6%, versus 48.7% in urban areas.

**Namibia Unemployment Rate: Broad vs. Strict Definition**



Source: NSA

**Broad Unemployment Rate by Age Group and Sex**



Source: NSA

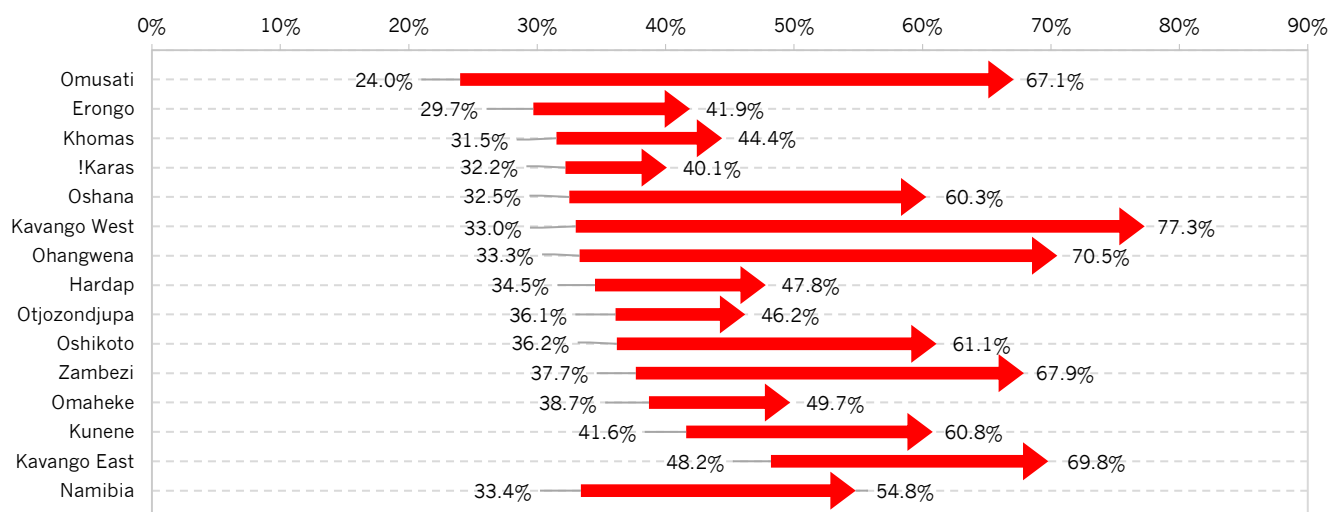
Namibia’s youth (aged 15–34) accounted for over half of the labour force in ‘23, yet they experienced the highest levels of joblessness. The youth unemployment rate stood at 44.1% under the strict definition and 61.4% under the broad measure. Females again faced worse outcomes, with youth unemployment at 48.2% compared to 41.0% for males. Young people

aged 15–19 were the most affected, with a broad unemployment rate of 81.1% among those not in education or training, highlighting the barriers to labour market entry for first-time jobseekers.

Unemployment was highest among those with only primary education, and improvements in employability were only marginal with secondary education. Technical and vocational training offered some improvement, while tertiary education showed a more noticeable effect. However, unemployment remained high across all education levels, indicating weak labour market absorption even for better-qualified individuals.

Unemployment worsened in every region, but rural areas experienced sharper increases, partly due to methodological changes. Own-use production work, such as subsistence farming, is no longer considered formal employment. While this group is still engaged in productive activity, they are classified outside the labour force and therefore excluded from unemployment statistics.

### Broad Unemployment change from '18 to '23



Source: NSA

Job losses were particularly pronounced in female-dominated sectors. The accommodation and food services industry lost nearly two-thirds of its workforce, largely due to the collapse of tourism during the COVID-19 pandemic. Wholesale and retail trade, agriculture, and domestic services also experienced significant employment declines. These losses account for much of the gender disparity in unemployment outcomes.

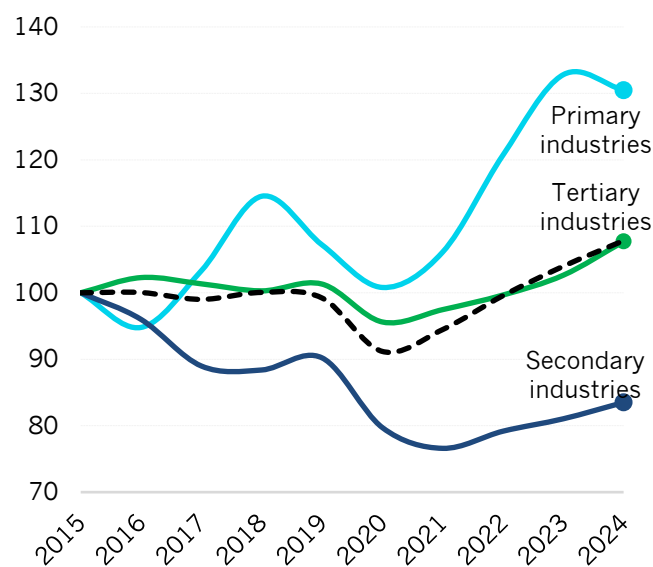
The data confirm that Namibia’s unemployment crisis has deepened over the past five years. However, policy responses have lagged due to the absence of timely statistics. While neighbouring countries conduct labour force surveys quarterly or annually, Namibia had not published new data since 2018. As a result, job creation and social welfare policies were developed without unambiguous evidence, often relying on outdated assumptions.

The shift to reporting only the strict unemployment rate has created a misleading picture of the labour market. By omitting over 340,000 individuals from the official unemployment count, despite their willingness to work, the scale of the crisis is understated in public discourse and policy planning.

### 3.2. GDP

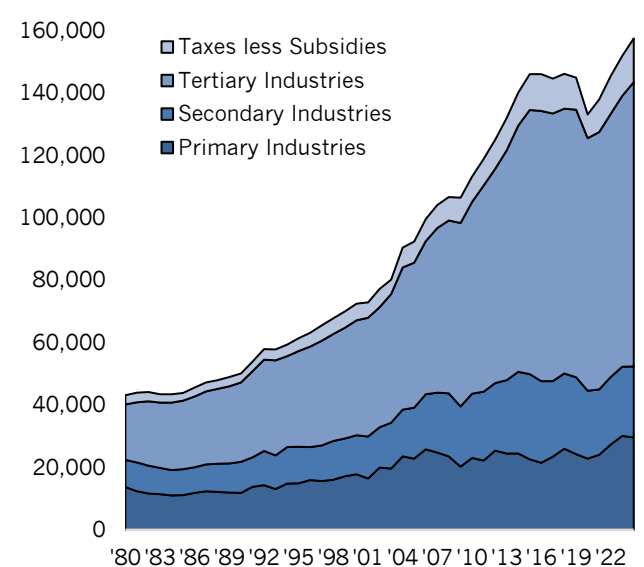
Namibia recorded real GDP growth of 3.7% in 2024, down from 4.4% in ‘23. This deceleration was driven in part by a contraction in the mining sector. However, when excluding mining, the underlying economic picture was more stable. Both the secondary and tertiary sectors recorded improved performance, reflecting broader economic resilience beyond extractives.

GDP Activity at Constant Prices (Indexed: '15 = 100)



Source: BoN

Real Value Addition (NAD Millions, constant '15 prices)



Source: BoN

Growth in the secondary sector accelerated to 3.0% in 2024, up from 2.4% in the previous year. Manufacturing recovered from earlier contraction, posting growth of 2.8% for the year. Gains were driven by beverage production and basic non-ferrous metals, including the resumption of refined copper output. While meat processing grew by 2.8%, this was notably slower than in recent years, reflecting the impact of herd restocking after drought-driven sales. Construction, from a very low base, expanded by 6.4%, marking its first annual growth in eight years. However, the sector remains significantly below historical capacity, at just a quarter of its 2015 size.

The tertiary sector remained central to growth, expanding by 4.9% in real terms, an improvement on the 3.0% recorded in 2023. This performance was driven by strong private consumption and improved service sector performance. Logistics stood out with growth of 11.4%, driven by a surge in cargo handling, particularly at Walvis Bay. The storage and road freight sub-sectors reached new record levels, while port activity expanded despite infrastructure pressures.

Based on the **Figure of Sectoral Performance** on the page that follows, wholesale and retail trade rose by 9.1%, supported by improved consumer spending following personal income tax relief and interest rate cuts. Financial services also expanded by 5.9%, reflecting stable deposit growth and improved banking sector liquidity. Despite a cautious lending environment, the sector benefited from lower funding costs and steady investment inflows. Public administration rebounded by 4.2%, driven by wage adjustments. The health sector grew by 8.3% as government continued to expand funding and personnel.

On the demand side, household consumption, supported by higher real incomes and expanded fiscal space, grew by 13.2% in 2024. Most of this consumption increase was directed towards discretionary spending, including clothing, beverages, and personal goods. In contrast, housing, utilities, and transport saw declines in real consumption.

Taken together, Namibia's non-mining economy delivered a broad-based recovery in 2024. While base effects helped lift growth in some sectors, underlying demand, particularly from households, played a decisive role. Sustained progress will depend on addressing structural challenges, improving public investment execution, and maintaining momentum in consumer-driven sectors.

**Sectoral Performance (NAD millions, constant '15 prices)**

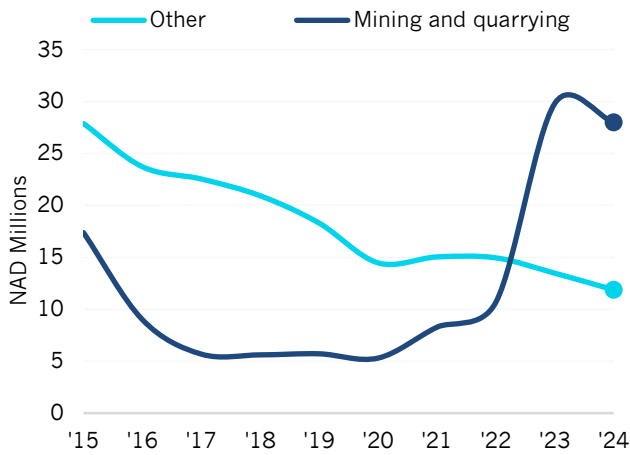
<b>Sector</b>	<b>'23</b>	<b>'24</b>	<b>Change</b>
Agriculture, forestry and fishing	10,932	10,640	-2.7%
Mining & Quarrying	19,186	18,947	-1.2%
<b>Primary Industries</b>	<b>30,119</b>	<b>29,588</b>	<b>-1.8%</b>
Manufacturing	15,845	16,292	2.8%
Water & Electricity	4,339	4,437	2.3%
Construction	1,927	2,050	6.4%
<b>Secondary Industries</b>	<b>22,110</b>	<b>22,780</b>	<b>3.0%</b>
Wholesale & Retail Trade	14,270	15,574	9.1%
Hotels & Restaurants	2,430	2,520	3.7%
Logistics	4,053	4,515	11.4%
Information & Communication	3,343	3,397	1.6%
Financial Services	10,427	11,037	5.9%
Real Estate	8,955	9,043	1.0%
Prof. Services	1,051	1,139	8.3%
Admin. & Support Services	1,463	1,521	4.0%
Art & Entertainment	2,067	2,104	1.8%
Public Admin. & Defence	16,913	17,629	4.2%
Education	14,616	14,852	1.6%
Health	6,198	6,714	8.3%
Private Household with Employed Persons	1,060	1,086	2.5%
<b>Tertiary Industries</b>	<b>86,845</b>	<b>91,131</b>	<b>4.9%</b>
<b>All Industries (Basic Prices)</b>	<b>139,074</b>	<b>143,499</b>	<b>3.2%</b>
Taxes less Subsidies on Products	12,767	13,978	9.5%
<b>Real GDP</b>	<b>151,841</b>	<b>157,476</b>	<b>3.7%</b>

Source: NSA

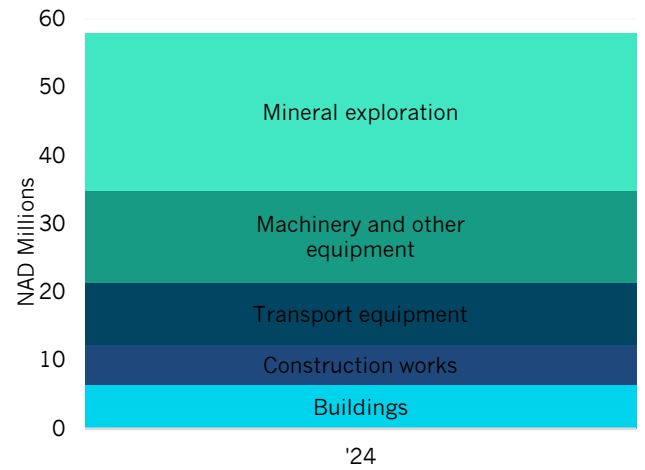
### 3.3. Gross Fixed Capital Formation (GFCF)

Real GFCF in Namibia declined by 7.9% in '24, reversing after three consecutive years of expansion. While the 2023 surge in GFCF (up 68.9% from 2022) was largely driven by offshore oil and gas exploration, the 2024 contraction was spread broadly across the economy. Excluding mining and quarrying, which fell by 6.1% in 2024, GFCF declined by 11.9%, with investment activity falling across nearly all major non-mining sectors.

**Gross fixed capital formation by type of asset (real)**

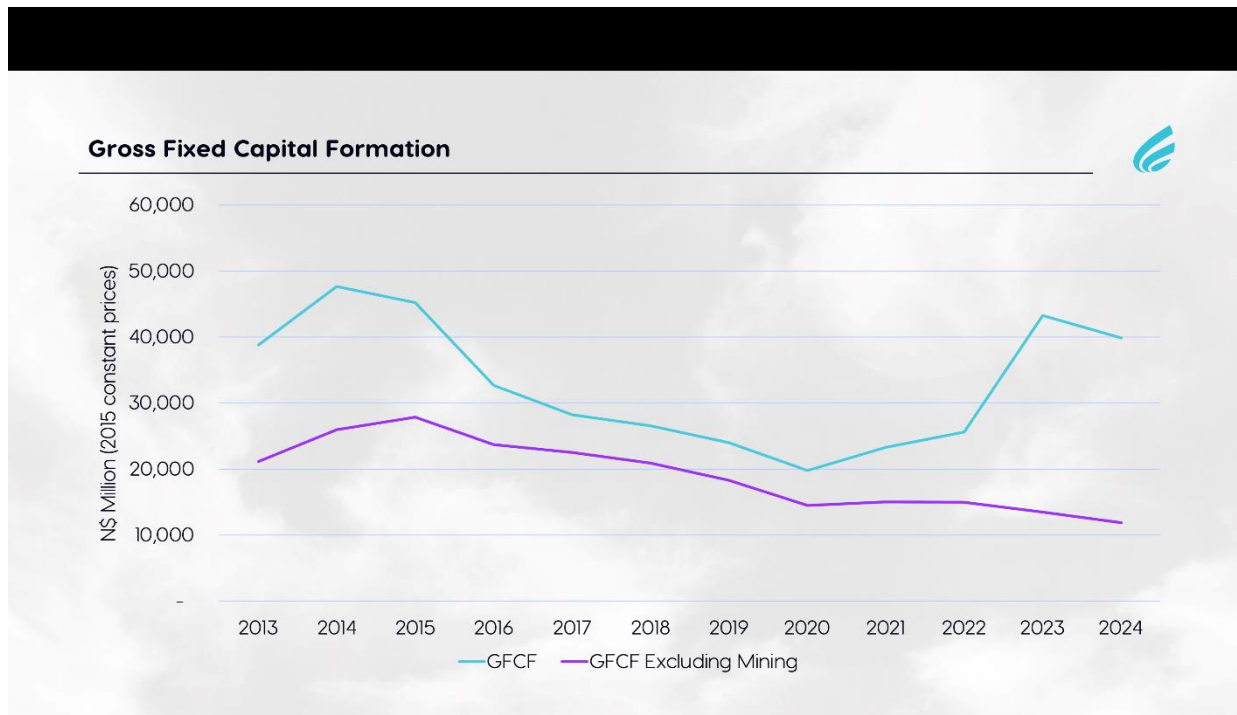


Source: BoN



Source: BoN

As illustrated below, without mining, which is completely incomparable to most other economic activity (i.e. it can only happen where the minerals are, it is highly capital intensive, labour costs make up a small percent of total costs (so if they have to pay up to hit demographic targets etc, they can), etc.) fixed capital investment has declined since 2015. Mining won't create jobs at the levels needed to address unemployment. Anything that reduces fixed capital investment is nothing short of economic suicide.



The wholesale & retail trade sector were one of only two sectors to post growth in capital formation. A few large players expanded operations, but the sector represents just 1.1% of total GFCF. Government services also posted marginal growth, off a very low base, supported by increased state spending in some departments. However, this remained historically weak and well below long-term averages.

The construction sector, despite returning to growth in 2024 after eight years of contraction, did not see a corresponding rise in investment volumes. Capital formation in construction remained subdued, which points to the hollowness of the industry after years of consistent decline.

In agriculture, capital formation declined significantly due to prolonged drought conditions. The sector remains very vulnerable to climatic shocks as there is very limited dryland and irrigation-driven resilience, and despite the solid rain experienced in Q1 of 2024, that is not a long-term solution. Investment in energy and water infrastructure declined by 79.7%, with several projects reaching completion and limited new developments initiated in 2024.

Manufacturing recorded moderate growth in output, particularly in non-ferrous metals and beverages, but again, this did not translate into increased capital formation. Investment remained constrained by uncertain demand conditions and a cautious approach by firms still recovering from the effects of the pandemic.

With most industries still operating below their 2014 investment peaks, the economy remains dependent on short bursts of capital expenditure rather than sustained investment flows. Although a rebound is expected in 2025, driven largely by oil-related activity, the outlook for broader, non-mining investment is up in the air and will depend on the newly instated parliament.

#### GFCF by Activity (NAD millions, real)

Industry	'19	'20	'21	'22	'23	'24
Agriculture	1,707	1,128	1,183	1,825	1,370	1,119
Fishing	954	270	1,589	44	480	112
Mining and quarrying	5,711	5,298	8,275	10,676	29,810	27,994

Manufacturing	4,092	3,002	2,919	3,815	2,985	2,447
Electricity and water	1,164	361	520	635	820	167
Construction	831	473	537	913	668	521
Wholesale and retail trade; hotels, restaurants	661	324	367	224	195	433
Transport, and communication	1,160	944	899	1,246	1,397	1,270
Finance, real estate, professional, administrative	3,966	4,673	4,430	3,500	3,243	2,970
Arts, entertainment, other services; pvt HH	240	194	219	347	328	316
Producers of government services	3,519	3,094	2,373	2,399	1,986	2,511
<b>Total</b>	<b>24,004</b>	<b>19,762</b>	<b>23,310</b>	<b>25,622</b>	<b>43,282</b>	<b>39,862</b>
Annual change	-9.5%	-17.7%	18.0%	9.9%	68.9%	-7.9%

Source: NSA

### 3.4. Foreign Direct Investment (FDI)

FDI into Namibia slowed in 2024, with total net inflows declining to N\$37.1 billion, down 23.1% from N\$48.2 billion in 2023. The decrease is partly explained by a high base in 2023, due to the disposal of foreign assets in the manufacturing sector. Excluding the mining sector, FDI activity remained moderate and was largely concentrated in financial services, manufacturing, and trade-related industries.

The mining and quarrying sector continued to dominate FDI in Namibia, accounting for 67.7% of the country's total FDI liabilities by the end of 2024. This represents an increase from 65.8% in 2023, largely due to oil and gas appraisal activities. Although some exploration campaigns were scaled down in 2024, for further analysis before final investment decisions. It should be noted that exploration cannot be regarded as FDI, because there is no guarantee that it will relate to sustainable investment and a positive Return on Investment (ROI). Other sub-sectors such as uranium and gold also received support, particularly as spot prices remained favourable for investment.

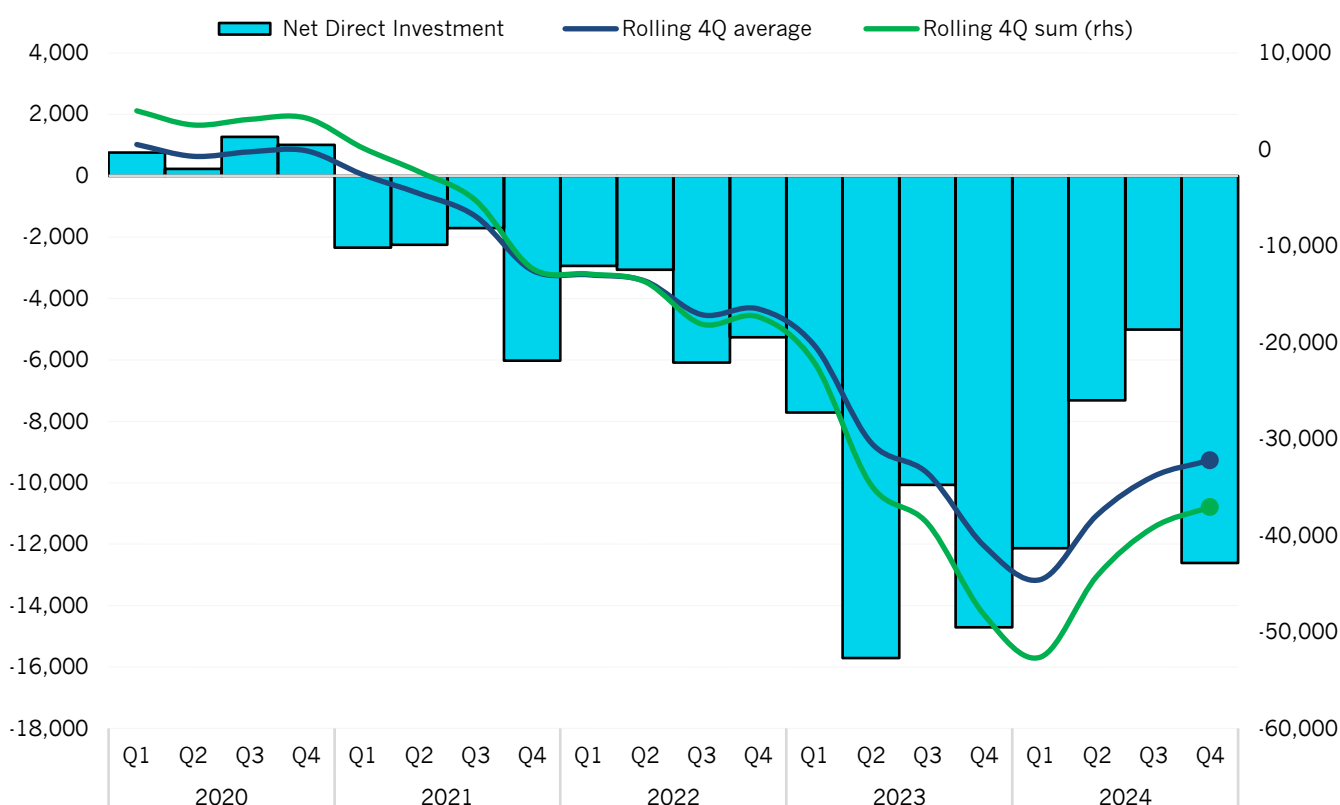
Financial and insurance services formed the second-largest sector for FDI, with 16.7% of total liabilities. Growth in this area was driven by increased intercompany borrowing and capital injections as foreign-owned institutions deepened their presence. Manufacturing held 7% of total FDI liabilities, down from 7.4% in 2023. The decline reflects the absence of once-off

transactions recorded the previous year. Nonetheless, existing operations in food processing and beverage production industry continued to receive moderate capital support.

Wholesale and retail trade accounted for 3.5% of FDI, supported by steady expansion of local distribution networks and franchise operations. These inflows were supported by improved consumer sentiment and disposable income growth due to tax adjustments and wage hikes. FDI into transport and storage rose from 0.1% in 2023 to 1.1% in 2024, with the expansion of the port at Walvis Bay being the main benefactor.

From a source-country perspective, China and South Africa remained the largest contributors to Namibia’s FDI stock, accounting for 37.6% and 23.0% respectively in 2024. However, their combined share, declined slightly as newer entrants, including the United States (6.1%), France (4.9%), and Arab Gulf States (7.2%) increased their presence, mainly in oil and gas.

#### Net FDI Flows [Inflow (-)/Outflow (+)] (NAD Millions)



Source: BoN

From the above data it is clear that economic activity in Namibia is woefully insufficient to arrest the massive unemployment problem. Drastic intervention is required to stimulate growth in the

private sector. The worst-case scenario is more obstacles to investment and doing business in Namibia. Sadly, this is exactly what the Employment Equity Bill will do.

Over the past eight years, EPRA provided several detailed reports on government policies (acts, regulations and bills), which hamper private sector growth, and increase unemployment. These reports also contained numerous recommendations. Most were printed and hand delivered to policymakers, including all ministers, deputy ministers, the National Planning Commission and State House. Unfortunately, it does not appear that the policymakers take these issues seriously, and the deplorable increase in unemployment from 2018 is evidence of this. These reports can be viewed at [www.epra.cc/downloads](http://www.epra.cc/downloads).

Returning to the Employment Equity Bill, the fundamental questions remain: Are affirmative action laws still relevant? Are they ultimately contributing to higher unemployment and reduced empowerment? The following section sheds some light on these questions and provides some results from an IPSOS poll in South Africa, and EPRA's own survey amongst Namibian businesses.

#### **4. Surveys on the Desirability of Affirmative Action in SA and Namibia**

##### South Africa

EPRA previously reported on a poll in South Africa, conducted by the Institute for Race Relations, which showed (many years ago already) that there is very limited public support for affirmative action and BEE in South Africa. The renowned polling firm IPSOS recently released the results of a poll (also in SA) on the topic "*Is it time for BEE to end?*".

The media reported the results as follow:<sup>4</sup>

- 44% of the population believes government should keep BEE going;
- 36% are of the opinion that government should end all BEE policies; and
- 20% did not know what government should do with BEE policies.

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<sup>4</sup> <https://specialprojects.news24.com/sa-speaks-is-it-time-for-bee-to-end/index.html>

## Namibia

For purposes of this report, EPRA conducted its own survey amongst Namibian businesses. The survey was conducted via email, by way of the Survey Monkey platform. An invitation to participate in the survey was sent to:

- Supporters and members of EPRA;
- Businesses who responded to a half-page advertisement inviting all Namibian businesses to participate in the survey; and
- Businesses who responded to an invitation from the Namibia Employers Federation (NEF) for their members (Namibian businesses) to participate in the survey.

The email containing the invitation to participate in the survey was opened by 296 businesses, and 169 participated (57% response rate).

The results were as follow:

- a) The number of employees employed by the participants are as follows:
  - 49% employed nine or less
  - 15% employed between 10 to 20
  - 36% employed 21 or more.
- b) The majority (54%) are not familiar with the provisions of the Employment Equity Bill.
- c) 44% are not aware that non-compliance with certain provisions of the Employment Equity Bill will be a criminal offence, punishable with up to 5 years in prison.
- d) 24% are not aware that all relevant employers (employing 10 or more employees) must comply with the affirmative action laws, irrespective of the race and gender of their owners and employees.
- e) 69% are not aware that in terms of the Employment Equity Bill, the Equity Commissioner may enter any business premises and conduct investigations, without first obtaining a warrant from a court to do so.
- f) 90% do not agree that Government should set numerical targets for private sector employment based on race and gender.
- g) 95% do not agree that business owners should be guilty of a criminal offence for not complying with gender and race based preferential treatment in making recruitment decisions.

- h) 87% do not agree that forced gender and race-based targets in recruitment continues to serve a justifiable purpose.
- i) 87% agree that recruitment of staff in private sector should solely be based on meritocracy.
- j) 96% agree that compliance with affirmative action laws adds to the cost of doing business.
- k) 89% agree that compliance with affirmative action laws is an obstacle to grow their business.
- l) 92% agree that compliance with affirmative action laws hampers economic growth.
- m) 90% agree that compliance with affirmative action laws hampers job creation.
- n) To the question: *“to what extent did affirmative action laws contribute to high unemployment in Namibia?”*, 34% stated *“very significantly”* and 34% stated *“significantly”*. 16% stated *“moderately”*, 6% stated *“slightly”* and close to 10% stated *“not at all”*.
- o) On the question: *“How likely is it that affirmative action laws will discourage foreign investment in Namibia?”*, 75% stated *“very likely”* and 19% stated *“somewhat likely”*.
- p) On the question: *“Do affirmative action laws make it harder or easier for businesses to hire the best talent?”*, 95% stated *“harder”*, 1% stated *“easier”* and 4% stated *“no change”*.
- q) On the question: *“Do affirmative action laws increase or decrease division in Namibian society?”*, 83% stated *“increase division”*, 8% stated *“increase unity”*, and 9% stated *“no impact”*.
- r) 74% reported that they are *“very likely”* or *“somewhat likely”* to find ways to reduce employees to void the status of relevant employer.
- s) 89% believe that affirmative action laws decrease productivity due to constraints in recruitment. 10% believe productivity is not affected and only 1% believe productivity is increased.
- t) On the question: *“Will the Employment Equity Bill influence your decision to expand, reduce, or relocate your business in the future?”*, 59% stated they will opt to *“reduce”*, 11% chose to *“relocate”* and 9% opted for expansion. 21% stated the bill will not make them consider any of these options.
- u) When asked to estimate the percentage of white males in Namibia’s population — the only demographic group that does not receive preferential treatment under affirmative

action laws — only 6% of respondents selected the correct answer, which is below 0.5%, with the actual figure being just 0.4%. 47% guessed the answer to be 2,6% or higher.

v) 79% are of the opinion that all affirmative action laws should be abolished.

From the above results, there is extremely limited support for Namibia's affirmative action laws amongst businesses that EPRA was able to reach through this survey. There is also an overwhelming sentiment that affirmative action laws hamper investment and economic growth and cause unemployment. A substantial number of respondents strongly believe that affirmative action laws have contributed either "significantly", or "very significantly", to the current high unemployment rate.

EPRA is not aware of any study or research conducted by the Namibian government to assess public support for, or opposition to, affirmative action laws, or to evaluate their impact on the Namibian economy and unemployment. In the absence of such research, it is difficult to accept that, 35 years after independence, the continued promotion of affirmative action laws remains grounded in a rational and evidence-based foundation. In fact, sentiment among entrepreneurs (the primary job creators) overwhelmingly suggests that affirmative action laws hinder economic growth and contribute to rising unemployment — a serious political dilemma in Namibia. Against this backdrop, the true motive for the continued enforcement of such laws remains unclear. Several possible explanations may exist, including:

- An outdated reliance on political rhetoric unsupported by empirical research.
- A desire for self-preservation and continued relevance by a government office, the Office of the Equity Commissioner.
- A lack of understanding of the realities and demographics within the Namibian business environment.
- A failure to grasp the true drivers of economic growth and job creation.
- An unwarranted sense of pity and patronization toward 99.6% of Namibia's population, who are likely fully capable and willing to educate and empower themselves within the private sector.
- The pursuit of political support from uninformed voters at the expense of their actual economic wellbeing.

## **5. Analysis of the Employment Equity Bill**

Before the provisions of the Employment Equity Bill are analysed, a few general, overarching observations are provided.

### **5.1. Overarching Observations**

#### **5.1.1. Statistical and Legal Absurdities**

The Employment Equity Bill requires all businesses above a certain size threshold to align their workforce demographics with national population ratios. However, in a country where the targeted racial group (white males) constitutes less than 0.5% of the population, statistical compliance often becomes impossible. For instance, in a 10-person company, the presence of a single employee from this group already reflects a 10% representation — twenty times the national proportion — technically creating an automatic breach of equity targets, even when no discrimination exists. This creates a legal paradox: the very existence of small firms owned or staffed by members of the non-Designated Group puts them at risk of being found “non-compliant,” regardless of actual hiring practices. Such rules effectively penalise numerical minority business owners simply for existing — a form of demographic engineering that veers into collective punishment rather than equal opportunity.

#### **5.1.2. Risks to Investment, Entrepreneurship, and Social Cohesion**

A rigid interpretation of numerical targets to achieve “employment equity” can be counterproductive. Businesses surveyed by EPRA expressed the strong sentiment that this is indeed the case.

#### **5.1.3. Regulatory Burden and Compliance Risks**

The Employment Equity Bill expands considerably on the current framework under the Act, both in scope and depth of regulation. While the Employment Equity Commission’s explanatory memorandum indicates a desire for flexibility, especially for smaller employers, it introduces a highly layered and complex compliance regime involving detailed employment equity plans,

numerical targets, regular reporting, and exposure to audits, monetary penalties, and administrative sanctions. Logically, the mere existence of such (numerous) requirements reduces the ease of- and increases the cost of doing business.

#### **5.1.4. Statistical Insignificance Becomes Legal Doctrine**

If a target group makes up less than 0.5% of the population, expecting exactly one out of 200 employees to come from that group may seem logical on paper. However, in practice, sample sizes that small, carry no statistical weight. Applying this logic to SMEs or small departments, contributes to erratic or meaningless targets—a business of 10 employees becomes non-compliant simply because it has more than one white male employee and a business of 100 employees becomes compliant if it has half a white male employee. That is patently absurd and unjust.

#### **5.1.5. Economic Punishment of Success**

Punishing or over-regulating businesses that are family owned or take on the entrepreneurial risk because they are “overrepresented” creates a perverse incentive. Rather than creating jobs or reinvesting in the economy, they may withdraw, downsize, or relocate. This does not build inclusion—it shrinks the economic pie. It hampers economic growth. It reduces Namibia’s potential to create jobs.

#### **5.1.6. Distraction from Real Empowerment**

An over emphasis on numbers creates a false sense of progress. Instead of asking if people are meaningfully empowered (via skills, assets, networks), the focus shifts to whether their identity box is ticked. A disadvantaged Namibian appointed to a high-profile job under pressure is different from broad-based upward mobility. However, the numbers might say the system is “working.” It creates symbolic “success” over substantive and second order transformation. Such policies risk prioritising representation over competence, productivity, or sustainable empowerment (e.g., token appointments or box-ticking) that is simplistic and not empowerment of the disadvantaged. As previous reported by EPRA, this creates some privilege for a small group of individuals, but, sadly, at great expense to the larger population, especially

the larger population of previously disadvantaged Namibians. The current 55% unemployment rate is but one indicator of the disastrous consequences.

#### **5.1.7. Perpetuation of Victimhood**

When groups are continuously framed as needing special help to succeed, it can undermine individual agency and merit, foster a narrative of helplessness or dependency on government, and create a “victim identity” that some individuals may internalise, or others may resent.

#### **5.1.8. Social Fragmentation**

Employment equity becomes zero-sum when narrowly focused on race. Every gain for one group is seen as a loss for another. This encourages resentment, tribalism, and division, rather than fostering a shared national project of inclusion and personal growth.

#### **5.1.9. Dehumanisation through Demographics**

Reducing people to their demographic identity —especially in such fine-grained quotas — strips individuals of complexity, merit, and individuality. It reinforces identity essentialism, where your value is tethered to your race, not your contribution. Equitable representation in a country like Namibia must be nuanced, flexible, and context-sensitive. Pursuing demographic balance blindly and rigidly risks turning justice (equity) into a caricature of cosmic justice based on equal outcome and not equal opportunity. Equity should empower, not alienate; it should create opportunities, not distort them; and it should be rooted in reality, not statistics and methodologies that defy economic logic or human dignity.

#### **5.1.10. Institutional Independence and Legal Certainty**

EPRA welcomes the conversion of the Employment Equity Commission into a juristic person, which is a step toward institutional independence. However, this autonomy is limited by extensive ministerial control over appointments, designations, and consultative powers. Furthermore, the Bill lacks a clear mechanism for external judicial review of compliance decisions. Review panels established under the Employment Equity Commission are not a substitute for access to courts and may not meet the constitutional standard for fair

administrative action. To enhance trust in the process and protect the rights of both employers and employees, we recommend the explicit inclusion of appeal rights to the Labour Court or High Court, particularly in matters involving penalties, compliance directives, and findings of discrimination.

## **5.2. Commentary on the Employment Equity Bill**

All references to Sections and Chapters in this part shall refer to the corresponding Chapters and Sections in the Employment Equity Bill (unless otherwise stated).

### **CHAPTER 1 - DEFINITIONS AND APPLICATION**

### **CHAPTER 2 - ADMINISTRATION OF ACT**

### **CHAPTER 3 - EMPLOYMENT EQUITY**

#### **5.2.1. Section 20: Implementation of Affirmative Action**

According to Section 20 (1), all Relevant Employers must implement affirmative action measures for Designated Groups to achieve employment equity.

#### **5.2.2. Who are the Designated Groups?**

Designated Groups include:

- *racially disadvantaged persons, meaning “all persons who belong to a racial or ethnic group that was or is, directly or indirectly, disadvantaged in the labour field as a consequence of social, economic, or educational imbalances arising out of racially discriminatory laws or practices before the Independence of Namibia” (Section 20(2)(i) read together with Section 20(3)(a);*
- *women of all racial groups (Section 20(2)(ii) read together with Section 20(3)(b);*

- *persons with disabilities*, which includes persons who have a chronic disease or illness, are disfigured, have a learning disability, or have a condition that affects their thought processes or perception of reality (Section 20(2)(iii) read together with Section 20(3)(c); and
- *marginalised or Indigenous groups*, which specifically includes the San, Ovaherero and Ovambo (Section 20(2)(iv)).

The Minister responsible for Labour may, after consultation with the Employment Equity Commission, extend or reduce the list of designated groups through a Government Notice (Section 20(4)).

For all practical purposes, Designated Groups are everyone other than white Namibian males. So, what numbers are we talking about?

According to the latest data released by the Namibian Statistics Agency, white males (of all ages) make up less than 0.9% of the total Namibian population (26,186 persons). If we strip out those white males who are either

- too young to work (aged 14 and under); or
- at (or near) retirement age (60 and older)

then we are left with less than 0.5% of the Namibian population (or 14,690 persons) who are the “target” of the Employment Equity Bill. The actual number will be even smaller because those aged 15 to 18 will (hopefully) still be in school, and a significant number will be enrolled in tertiary education for many years before starting work or a business.<sup>5</sup>

Namibia (and South Africa) are global outliers insofar as they impose affirmative action policies on a numerical minority in favour of a numerical majority. There are, of course, unique historical reasons for this (including the legacy of *apartheid*), which was truly relevant shortly after Independence. However, after 35 years of independence, does the same imperative still exist? Does it make sense to impose what amounts to state-driven demographic and employment

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<sup>5</sup> Namibia Statistics Agency, Namibia 2023 Population and Housing Census, Main Report, Pages 7 to 21 – The full report is available at <https://nsa.org.na/census/wp-content/uploads/2024/10/2023-Population-and-Housing-Census-Main-Report-28-Oct-2024.pdf>

engineering onto the private sector, aimed *against* a very small minority (less than half a percent) *in favour of* a large majority (basically everyone else)? Does it even make sense to have 99.5% of the population as a Designated Group? Should the focus not rather be on creating *more* employment for everyone, rather than creating bureaucratic obstacles that inhibit employment creation by policing everyone (including all public and private sector) entities who employ 10 or more people) to see if they comply with self-imposed numerical targets to achieve some vague concept of “employment equity” with no target percentage or end date in mind?

It is time for a new paradigm. Namibia’s economic challenges are well documented, and many can be traced back to sub-optimal government policies (as further detailed in this report). The Employment Equity Bill is a powerful illustration of how well-intentioned equity policies can become mathematically nonsensical when applied dogmatically. It creates a statistical and logical absurdity to apply employment equity “quotas” in perpetuity in a country like Namibia, where extreme poverty and population asymmetries exist.

### **5.2.3. Is the Employment Equity Bill Constitutional?**

Section 20(5) provides that *“in so far as the provisions of this Act provide for the implementation of a policy or practice that may diminish or derogate from the fundamental human rights contemplated in Article 10 of the Namibian Constitution of any relevant employer or employee, such provisions are enacted upon the authority of Article 23 of the Namibian Constitution”*.

The Employment Equity Commission seems to acknowledge, at least tacitly, that some provisions of the Employment Equity Bill may impact on the fundamental human rights of everyone who is not part of the Designated Groups.

The Namibian Constitution is the supreme law of Namibia. All legislation is subservient to the Constitution. Article 10 provides for equality and freedom from discrimination. It states that all persons shall be equal before the law [Section 10(1) and that no persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status (Section 10(2)].

Article 23 of the Constitution deals with the legacy of *Apartheid* and Affirmative Action. It provides (in Section 23(2)) that

*“Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the defence force, the police force, and the correctional service”.*

Article 21 of the Constitution deals with Fundamental Freedoms. However, Fundamental Freedoms are not absolute. They may be restricted provided any restrictions are reasonable and necessary in a democratic society and in the interests of the sovereignty and integrity of Namibia [Article 21(2)].

Article 22 of the Constitution goes on to say that any law that provides for a limitation of fundamental rights and freedoms shall be of *“general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual”*.

In principle, providing support to groups previously disadvantaged is both constitutional and legitimate. However, proportionality must always be reasonable and contextual. It is debatable that any policy that withholds preferential (employment) treatment from a small minority (who make up less than 1% of the population) indefinitely is proportional, reasonable or necessary in a free and open democratic society like Namibia, especially 35 years after Independence. It is also, quite frankly, an insult to the Designated Groups who make up more than 99.5% of Namibia’s population. It implies that the vast majority of intelligent and hard-working Namibians are somehow incapable of achieving success or enjoying employment equity without the Employment Equity Commission breathing down their neck and policing all Relevant Employers in perpetuity.

It also does not help that the policy has no beginning and no end. The Employment Equity Commission makes it quite clear (on page 4 of its Explanatory Memorandum) that the aim of

the Employment Equity Bill is “to recognise the ultimate objective of implementing affirmative action in employment and to address and dispel the notion that employment equity is a short-term or time-bound project...The present title, Affirmative Action, seemingly provokes a sense of a short-term initiative that must have a start and end date. Employment equity as understood and practiced worldwide does not induce such an understanding”. Let us unpack employment equity.

#### **5.2.4. What is Employment Equity?**

Employment equity is a “suitcase” word. It has no universally agreed-upon definition and means different things to different people. To some, it aims to create a fair and inclusive workplace by eliminating discrimination and ensuring equal opportunities for all, regardless of protected characteristics. Very few people will have a problem with this aim. To others, it goes further by including measures to actively address historical imbalances (either time-bound or in perpetuity). To some, it requires actions that not only provide equal opportunities but also guarantee equal outcomes.

The Employment Equity Commission explains its understanding of employment equity on pages 8 and 9 of its Explanatory Memorandum where it states that -

*“Chapter 3 addresses the concept of affirmative action in different parts under headings such as ‘employment equity’, ‘identification and duties of employers’, and ‘employment equity plan and report’. The approach taken in the new bill is to largely retain but to present in smaller and directed parts the current Part II of the Act and to address relevant topics under different headings and further chapters in the new bill. The aim is to ensure clarity, and proper context, and hopefully a better understanding”.*

#### **5.2.5. Section 21: Prohibition and elimination of unfair discrimination**

The Employment Equity Commission explains that *“the Namibian affirmative action framework is principally directed at ensuring equal employment opportunities and eliminating discrimination. The aspect of eliminating discrimination did not enjoy the necessary prominence in the current Act. It is therefore introduced in the bill to address this lacuna”.*

According to Sections 21 (1) to (3) -

- No person may unfairly discriminate, directly or indirectly, against an employee in any employment decision, policy or practice;
- Violence and harassment in the world of work is a form of unfair discrimination and is prohibited; and
- Every relevant employer must promote equal opportunity in employment.

Section 21 (5) deals with Relevant Employers who offer training courses or vocational training. It expressly includes educational institutions and training bodies. Relevant employers may not discriminate against any person *“in the terms on which any such course or related facility is offered”*, *“by refusing or omitting to afford access to any such course or facility”*, or *“in the manner in which any such training, course, or facility is provided”*.

It is not clear whether a Relevant Employer will discriminate against a Designated Group if, for example, it offers a field course and does not provide access to disabled persons who are mobility impaired or a training course that does not cater to visually impaired employees. That can clearly not be the intention, but it should be clarified.

Section 21 (5) (iii) makes it clear that it is lawful discrimination if a Relevant Employer provides preferential treatment for Designated Groups in terms of admission fees, place allocation, sponsorship, or bursaries, which are reasonably justified.

Sections 21 (9), (10) and (11) contain various provisions where a Relevant Employer will be deemed to practice unlawful discrimination. This can relate to entry requirements for employment (offering different entry requirements to different people who will be doing substantially the same work) and not providing the same training or promotion opportunities to everyone (who are or will be doing substantially the same work). It is not entirely clear how this will work in practice or how flexible the Employment Equity Commission will be when it comes to smaller Relevant Employers who may lack the resources or facilities to extend the same opportunities to everyone.

### 5.2.6. Section 22: Equal Remuneration for Work of Equal Value

This Section addresses equal remuneration for work of equal value.

It is not always clear what constitutes work of equal value, but the Employment Equity Commission attempts to define it in Section 22(3). It may be useful to further clarify exactly what this would look like in practice (especially for smaller Relevant Employers who may have limited compliance capacity and/or financial means).

### 5.2.7. Section 23: Employers not required to take certain measures

This Section mirrors Section 43 of the Act. According to the Employment Equity Commission it creates “*balance in affirmative action implementation by assuring employers that they are not required to create new employment positions, hire or promote an arbitrary number of persons, hire or promote persons who are not suitably qualified and take employment decisions that act as an absolute bar on the recruitment or promotion prospects of a person who does not belong to a designated group*”. [own emphasis]

We are not convinced that it achieves a reasonable balance. It does not fully resolve the tension between the positive obligations imposed on Relevant Employers to further the objectives of the Employment Equity Bill (especially in respect of numerical targets contained in employment equity plans and reports) and freedom of business operations. Every single Relevant Employer in Namibia will have the administrative and bureaucratic burden of having to comply with the provisions of the Employment Equity Bill. It clearly adds another (never-ending) layer of red tape to business at a time when we can ill afford it.

It is not clear what is meant by taking employment decisions that are not an “*absolute bar*” to the recruitment or promotion prospects of persons who are not in Designated Groups. Logically, the bar is higher than a minor inconvenience (annoying, but survivable) and lower than an absolute impossibility (or outright ban, which would be unconstitutional). There is a lot of space in between which could, depending on how rigidly the Employment Equity Commission interprets its powers, cause substantial impediments to career prospects of persons in a non-Designated Group.

### **5.2.8. Section 24: Identification of Relevant Employers**

Anyone who employs 10 or more people is considered a Relevant Employer for purposes of the Employment Equity Bill. The Employment Equity Commission (in a Windhoek presentation dated 3 April 2025) confirmed that 1,307 affirmative action reports were submitted during the 2023/2024 reporting period. There are approximately 1,700 Relevant Employees registered with the Employment Equity Commission (both in private and public sector). This tells us that there are a relatively small number of employers in Namibia who have both the scale and capacity to employ 10 or more people.

### **5.2.9. Section 26: Duties of Relevant Employers**

This Section sets out several measures (and positive obligations) that a Relevant Employer must take to implement affirmative action measures *in favour* of Designated Groups to achieve employment equity. These include -

- identify and empower a senior employee who will have overall responsibilities for the implementation and monitoring of employment equity;
- conduct an analysis and review to identify and eliminate employment barriers *against* persons in Designated Groups;
- institute policies and practices and make reasonable efforts in the workplace to accommodate, physically or otherwise, persons with disabilities;
- institute positive measures to further the employment opportunities for persons in Designated Groups
- provide information to its employees explaining the purpose of employment equity and shall keep its employees informed about measures the employer has undertaken or is planning to undertake to implement employment equity and the progress the employer has made in implementing employment equity;
- consult with its employees (as required by Section 28);
- prepare an employment equity plan (as required by Section 31); and
- prepare and submit an employment equity report (as required by Section 40).

### 5.2.10. Section 27: Preferential treatment in employment decisions

Relevant Employers must *give preferential treatment* in employment decisions to suitably qualified persons from Designated Groups - Section 27(1).

Stating it another way: 100% of Namibian employers (who employ 10 or more people) may not employ 0.5% of Namibians (the non-Designated Group) if a suitably qualified person can be found from a pool of 99.5% of Namibians (the Designated Group).

This is a positive obligation [Section 27 (2) (b)]. Relevant Employers must take certain steps to ensure that such persons are *equitably represented* in the workforce of the Relevant Employer.

### 5.2.11. What is meant by Equitably Represented?

The Employment Equity Bill does not have a separate, lone-standing definition of what it means to be "*equitably represented*". However, it does in four of its sections offer clues:

- The definition of "*affirmative action*" means "*a set of affirmative action actions intended to ensure that persons in designated groups enjoy equal employment opportunities at all levels of employment and are equitably represented in the workforce of a relevant employer*";
- Section 27 (1) states that "*relevant employers must, in order to further the employment opportunities for persons in designated groups, give preferential treatment in employment decisions to suitably qualified persons from designated groups to ensure that such persons are equitably represented in the workforce of a relevant employer*";
- Section 31 (2) (iii) states that the three-year employment equity plan must specify positive policies to "*ensure that such persons (i.e. persons from Designated Groups – our emphasis) are equitably represented in the various positions of employment*"; and
- Section 33 (1) (2) states that "*to determine whether a designated group is equitably represented in the various positions of employment offered by a relevant employer, or*

*whether the numeral goals of the relevant employers' employment equity plan are satisfactory the Commission shall take into account the factors listed in subsection (1), in addition to such other factors as it may determine".*

Although the Employment Equity Commission was careful not to state demographic representation or exact quotas as the ultimate goal, it is implied.

There is a clear emphasis on *numerical goals* to achieve employment equity. The Employment Equity Commission will look at the factors set out in Section 33 (1) to determine whether employment equity has been achieved, namely:

- the degree of underrepresentation of persons in each designated group in each occupational group within the employer's workforce;
- the availability of qualified persons in designated groups within the employer's workforce and in the Namibian workforce for such positions of employment;
- the availability of persons in designated groups who are able and willing, through appropriate training programmes, to acquire the necessary skills and qualifications for such positions of employment
- the anticipated growth or reduction of the employer's workforce during the period in respect of which the numerical goals apply;
- the anticipated turnover of employees within the employer's workforce during the period in respect of which the numerical goals apply; and
- any other factor that may be relevant or prescribed.

#### **5.2.12. Section 35: Reasonable progress**

This is a new provision that forces every Relevant Employer to ensure that reasonable progress is made in implementing their employment equity plans. It is however not clear exactly what

constitutes “*reasonable progress*”? Clearly Relevant Employers and the Employment Equity Commission may have different views on it. The problem is that the Employment Equity Commission has the hammer, and Relevant Employees are the nail. This should be further clarified.

#### **5.2.13. Section 36: Implementation and monitoring of the plan**

There is an obligation on Relevant Employers to, “*make all reasonable efforts to implement its employment equity plan*” and to “*monitor implementation of its plan quarterly to assess whether reasonable progress toward implementing employment equity is being made*”.

#### **5.2.14. Section 37: Periodic review and revision of the plan**

Employment equity plans must be revised every three years with updated numerical goals. Relevant Employers also must include “*in each, third, and final further employment equity report for a particular three-year cycle, a new employment equity plan covering the ensuing three years*”. This is a never-ending cycle.

#### **5.2.15. Section 38: Amendment of employment equity plans**

Even if an employment equity plan is approved, it still needs to be amended and revised every three years. Again, there is no end date in sight. It is perpetual red tape.

#### **5.2.16. Section 39: Employment Equity Plans and Reports of the Public Service**

The public sector is not exempted from the Employment Equity Bill. Every Office/Ministry/Agency, and Regional Council in the Public Service identified as a relevant employer shall prepare an employment equity plan.

#### **5.2.17. Section 40: Contents of employment equity reports**

Employment equity reports are onerous documents. Every first employment equity report must contain:

- the names of every non-Namibian citizen employed by such relevant employer and Namibian citizen to be trained as required by section 27(3) including an understudy training program and training progress report;
- the statistical report referred to in section 41(1);
- the employment equity plan prepared in terms of section 31;
- a summary of the employment equity measures, including the numerical goals for the employment of persons in designated groups in the various job categories and grades or equivalents thereof in the employment offered by such employer, and any other objectives, if any, which that relevant employer intends to implement during the ensuing reporting period;
- the records and documents used in the preparation of the report in question; and
- such other documents or information as the Employment Equity Commission may require.

Further employment equity reports must contain the following:

- the names of every non-Namibian citizen employed by such relevant employer and Namibian citizen trained;
- a statistical report referred to in subsection 41(2), revised where necessary;
- the approved employment equity plan or a proposed amended employment equity plan;
- an evaluation of the employment equity plan implemented during the immediately preceding reporting period;

- where necessary, a statement of the specific affirmative action measures that the relevant employer proposes to implement to remedy any deficiency identified for the reporting period;
- a summary of the affirmative action measures, including the numerical goals for the employment of persons in designated groups in the various job categories and grades or equivalents thereof in the employment offered by such employer, and other objectives, if any, which that relevant employer intends to implement during the ensuing reporting period;
- the records and documents used in the preparation of the report in question; and
- such other documents or information as the Commission may require.

The Employment Equity Commission has very wide discretion to prescribe any requirements as it may deem necessary relating to employment equity reports and their submission.

#### **5.2.18. Section 41: Statistical Report**

Every Relevant Employer must prepare a statistical report that must be revised annually. It must contain:

- a statistical report about a relevant employer's workforce;
- the job categories and grades or equivalents thereof of employment offered, and the representation of persons in designated groups in each such category and grade or equivalents thereof;
- the number of employees hired, received training, promoted and whose services have been terminated in the preceding twelve months, and the representation of persons in designated groups among those employees;

- the scales of salary, the number of persons in designated groups in each such scale and the actual remuneration and other benefits of his or her or its employees;
- the number of non-Namibian and training of Namibian understudies;
- the Namibian understudy identified for each non-Namibian to understudy the non-Namibian employee for skills transfer;
- Non-Namibian and Namibian understudy training plan and progress report; and
- any such other information as may be required by the Employment Equity Commission.

#### **5.2.19. Section 42: Submission of employment equity reports**

The timeline for submitting a first employment equity report has been shortened from 18 months to 15 months (from the date on which such an employer has been identified as a Relevant Employer).

Relevant Employers must submit a further employment equity report *“not later than twelve months from the date of the submission of the first employment equity report”* and *“thereafter once every twelve months from the date of submission of the immediately preceding employment equity report”*. This clearly places a heavy administrative (and costly) burden on business.

#### **5.2.20. Section 43: Electronic filing**

There is a provision for the filing of reports by electronic means, which is to be welcomed. However, this appears to be a possibility only if it is *“directed”* by the Employment Equity Commission. It is not clear whether Relevant Employers can file reports even if the Employment Equity Commission does not *“direct”* them to do so. This should be clarified.

### **5.2.21. Section 44: Public inspection of employment equity reports**

Employment equity reports are available for public inspection and a copy may be made (against payment of a prescribed fee). The Employment Equity Commission may also (under special circumstances) withhold the employment equity report for a period not exceeding one year.

There is, in principle, nothing wrong with making employment equity reports for public inspections. However, there may be concerns about confidential data.

### **5.2.22. Section 45: Submission of consolidated reports**

The Employment Equity Bill makes provision for the filing of consolidated reports. The Employment Equity Commission can decide to do so if, in its opinion, businesses are “associated” or “related” and have common control or direction.

Section 45 (2) deems two employers to be associated if “*one is a business or a legal entity of which the other, whether directly or indirectly, has control or if both businesses or legal entities of which a third person, whether directly or indirectly, has control*”.

The Employment Equity Commission may also, of its own accord (or on application of a registered trade union) make an order that “*such relevant employer and any or all of its subsidiaries, branches or any other subdivision, as the case may be, constitute a single relevant employer*” for the purposes of the Employment Equity Bill.

### **5.2.23. Section 47: Employment Equity compliance certificate**

Employment equity compliance certificates are valid for twelve (12) months from the date of issue.

## **CHAPTER 4 - COMPLIANCE**

Chapter 4 deals with compliance and enforcement. It has four (4) parts: Part A deals with the assessment of compliance, Part B with review panels, Part C with disputes, and Part D with restrictions. According to the Employment Equity Commission it is an attempt “*to introduce a*

*different but fair and business-oriented model to achieve a meaningful transformation of our labour market”.*

However, is it really a “*fair and business-oriented model*” as the Employment Equity Commission alleges?

There are deeply layered and onerous enforcement procedures imposed on Relevant Employers. It creates a potential (never-ending) compliance nightmare and onerous administrative regime that imposes significant regulatory complexity and uncertainty to Namibia’s business environment. Even if well-intentioned, it risks undermining business confidence, job creation, and economic growth.

The Employment Equity Commission and its compliance officers are empowered with far-reaching authority to supervise, audit, and enforce the provisions of the Employment Equity Bill. Compliance officers are allowed to enter business premises to seize documents on loosely defined “*reasonable grounds*” (Section 48 and 49). These powers extend to private homes with a magistrate's warrant (Section 60) if a Relevant Employer refuses entry to a compliance officer to his home.

There is an attempt to temper some of these powers in Section 48 (3), which states that “*the Commission shall, in discharging its responsibility under subsection (1), be guided by the policy that, wherever possible, cases of non-compliance be resolved through persuasion and negotiation or written undertakings and that directions be issued, and applications for orders be made in terms of this Act only as a last resort*”. It is not clear what “*whenever possible*” means but it does not take away from the broad powers granted to the Employment Equity Commission.

The reality is that Relevant Employers are under constant threat of intrusive inspections. Rather than a supportive or incentivised regulatory approach, this regime resembles investigatory policing, which could discourage business formalisation (and expansion) and exacerbate informality.

As stated above, the compliance and enforcement procedures are numerous and deeply layered. Other examples include:

- Conducting general compliance audits by compliance officers (Section 48).
- The power of compliance officers to at any reasonable time enter any place in which the officer believes on reasonable grounds there is anything relevant to the enforcement of any of the provisions of the Employment Equity Bill and require any person to produce for examination or copying any record, book of account or other document that the officer believes on reasonable grounds contains information that is relevant to the enforcement of any of the provisions of the Employment Equity Bill (Section 49).
- Attempts at negotiated undertakings where a compliance officer thinks, in his/her opinion, that a Relevant Employer is in breach (Section 50).
- Issuance of directives and escalating the matter to the Employment Equity Commission if a compliance officer, in his/her opinion, fails to obtain a written undertaking that would be sufficient to remedy non-compliance (Section 52-54).
- Review and disapproval of equity reports (Section 58-61).
- Hearings before review panels (Section 62-66).
- Final orders and enforcement (Section 66-70).

Each procedural layer introduces more paperwork, delays, and costs. The cumulative effect is a high barrier to compliance, especially for smaller businesses lacking dedicated human resources or legal departments. Instead of fostering equity, this burdensome system could drive companies to avoid participation altogether and/or pass costs onto consumers.

#### **5.2.24. Conditional Access to State Contracts and Licences**

One of the more coercive elements of the Employment Equity Bill is the requirement under Section 72, that no Relevant Employer may -

- enter into a contract with the State, or
- receive a grant, licence, permit, or concession, or
- be awarded a mineral right or exploration licence,

unless they possess a valid Employment Equity Compliance Certificate. These certificates are valid for only 12 months (Section 47), effectively forcing businesses into a never-ending annual compliance cycle to maintain eligibility for state-related opportunities.

#### **5.2.25. Vague Evaluation Criteria and Discretionary Enforcement**

Compliance officers are given discretion to determine whether employers are acting in "*good faith*" or have made "*reasonable efforts*" to implement affirmative action (Section 60). No objective benchmarks are prescribed, and the Employment Equity Commission may presumably adopt any "*assessment methodology*" it chooses.

This lack of transparency opens the door to inconsistent application and abuse of power. Relevant Employers are left guessing what constitutes sufficient compliance, making planning and reporting highly uncertain. It also undermines trust in the entire process itself.

#### **5.2.26. Time-Consuming Dispute and Review Mechanisms**

Although the review panel process offers a theoretical remedy, it introduces another layer of procedural complexity. Disputes must go through panel hearings, evidence submissions, and potential judicial review in the Labour Court (Sections 62-66). No appeal exists outside of judicial review, further increasing the stakes. This is in context of employers who are already

experiencing extensive (and extremely costly) delays associated with a backlog in Labour Court cases.

This framework has the potential to overwhelm SMEs and tie up valuable business resources in prolonged legal engagements. Many employers may choose not to contest adverse findings simply due to the time and cost involved, eroding their right to a fair hearing.

Rather than creating an enabling environment for inclusive growth, the Bill in its current form is certainly to deter investment, reduce employment, and incentivise avoidance of formal sector compliance. A reconsideration of the compliance framework is necessary to better balance employment equity with economic pragmatism.

## **CHAPTER 5 - ASSESSMENT OF MONETARY PENALTIES**

### **5.2.27. Section 73: Violations**

There are several acts or omissions which are considered a violation under the Employment Equity Bill. This includes instances where a Relevant Employer: -

- without reasonable excuse, fails to file or file after the due date an employment equity report (Section 73 (1) (a));
- without reasonable excuse, fails to include in the employment equity report any information that is required...to be included; or
- provides any information in the employment equity report that the employer knows to be false or misleading; and
- fails to correct shortcomings within the period provided for.

In terms of Section 73 (2), any violation that is committed or continued more than one day constitutes a separate violation for each day on which it is committed or continued.

### **5.2.28. Section 74: Assessment of monetary penalty**

The Employment Equity Commission may, within six (6) months after the day on which it becomes aware of a violation, issue a notice of assessment of a monetary penalty in respect of the violation and deliver it to the relevant employer. The prescribed amount of a monetary penalty shall not exceed N\$ 30,000 for a single violation; and N\$ 100,000 for repeated or continued violations (Section 74 (2)).

### **5.2.29. Section 76: Relevant Employer's options**

A relevant Employer has 30 days from the date of receiving a notice of non-compliance to either:

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- comply with the notice; or
- apply for a review by the review panel.

Failure to exercise one of these two options means that the Employment Equity Commission can proceed with collection proceedings. A due and fair process that should be available to employers have been severely reduced by the introduction of extremely short timelines within which employers must act, or face rather severe consequences.

### **5.2.30. Section 77: Review by the Review Panel**

The Employment Equity Commission, upon receipt of a notice for review, shall establish a review panel consisting of three members to review the assessment.

### **5.2.31. Section 79: Opportunity to make representations**

The review panel, *"shall provide the relevant employer and the employment equity compliance officer with a full opportunity consistent with procedural fairness and natural justice to present evidence and make representations to it with respect to the alleged violation"*.

### **5.2.32. Section 80: Determination of review panel**

The Employment Equity Commission has the burden of proving, on a balance of probabilities, that an employer has committed the alleged violation (Section 80 (3)).

Any determination of the review panel is final (except for judicial review under the Labour Act).

A certificate issued by the review panel may be registered in the Labour Court and when registered has the same force and effect, and all proceedings may be taken on the certificate as if the certificate were a judgment in that Court obtained against the relevant employer named in the certificate for a debt in the amount set out in the certificate [Section 80 (6) and all reasonable costs and charges associated with registration of the certificate are recoverable in like manner as if they were part of the amount determined by the review panel under subparagraph 80(1)(b)(i)].

## **CHAPTER 6 - MISCELLANEOUS**

### **5.2.33. Register of designated employers**

The Employment Equity Commission must keep a register of designated employers that have submitted reports. The register is a public document.

### **5.2.34. Section 82: Regulations**

The Minister responsible for Labour - after consultation with the Commission - may make regulations prescribing the requirements applicable to any particular industry or sector of the economy in the application of the Employment Equity Bill; and any other matter the Minister may deem necessary or expedient.

The regulations may prescribe a penalty of up to N\$ 10,000 and/or imprisonment for any contravention of or failure to comply with any provision thereof [Section 82 (2)].

### **5.2.35. Sections 83 and 84: Exemption to train a Namibian understudy & Exemption to hold a valid employment equity compliance certificate**

These Sections make provision for the Minister responsible for Labour, to issue exemptions for Relevant Employers to train in the workplace a Namibian citizen as the understudy of such non-Namibian citizen (if the work or skills are of such a specialised nature that it is not reasonably possible for the relevant employer to train a Namibian understudy or it is impractical to do so). A Relevant Employer who does not hold a valid employment equity compliance certificate may apply to the Minister for an exemption.

The Minister has wide powers to grant exemptions, and it is possible that arbitrary exemptions may be granted, placing some Relevant Employers at a disadvantage to others.

### **5.2.36. Section 84: Offences and penalties**

The “*fair and business-oriented model*” (according to the Employment Equity Commission) contains some substantially draconian penalties for non-compliance.

In terms of Section 84 (1): -

- any person who victimises in any manner any person who furnishes information to or lodges a complaint with the Employment Equity Commission or exercise any right conferred by the Employment Equity Bill; or
- discriminates in any manner against a person who has testified, assisted, or participated in any manner in any proceeding under the Employment Equity Bill; or
- obstructs or prevents a member of the Employment Equity Commission, an employment equity compliance officer; or other representative of the Employment Equity Commission from complying with the provisions of or an order issued under the Employment Equity Bill; or
- fails to comply with section 29 (keeping records); or

- favour, or promise to favour, an employee to a dispute arising out of a breach of any right conferred by the Employment Equity Bill

shall be guilty of an offence and on conviction be liable to a fine not exceeding **N\$80 000** or to imprisonment for a period not exceeding **4 years** or to both such fine and such imprisonment.

Also, any Relevant Employer who does not

- identify a senior employee who will have overall responsibilities for the implementation and monitoring of employment equity [Section 26 (a)];
- conduct an analysis and review for the identification and elimination of employment barriers against persons in designated groups that result from the relevant employer's employment systems, policies and practices [Section 26 (b)];
- institute such policies and practices and making reasonable efforts in the workplace to accommodate, physically or otherwise, persons with disabilities [Section 26 (c)];
- give preferential treatment in employment decisions to suitably qualified persons in designated groups to ensure they are equitably represented [Section 27 (1)];
- implement positive measures including a points-based system to give preferential treatment in employment decisions to suitably qualified persons in designated groups [Section 27 (2)];
- give priority to a candidate who is a Namibian citizen or where two or more suitably qualified candidates from designated groups qualify for a position of employment, give priority to a candidate who belongs to more than one designated group [Section 27 (3)];
- carry out a minimum of one consultation meeting per quarter to reach employment equity (Section 28);
- prepare and implement a three-year employment equity plan (Section 31);

- collect information and conduct an analysis of its workforce in order to determine the degree of the underrepresentation of persons in designated groups in each occupational group in that workforce (Section 32); or
- give a compliance officer at any reasonable time access to any place the compliance officer reasonably believes is relevant (Section 49);

shall be guilty of an offence, and on conviction be liable (a) for a first offence, to a fine not exceeding **N\$40 000** or to imprisonment for a period not exceeding 2 years, or to both such fine and imprisonment. For a second or subsequent offence, to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 5 years, to both such fine and imprisonment.

There is also a reference to penalties if a Relevant Employer fails to comply with Section 65 (3) (b) of the Employment Equity Bill but there is no such section in the bill.

## **6. Patterns and Lessons from Malaysia and around the World**

As stated earlier, EPRA is not aware of any empirical research conducted by the government specifically within the Namibian context — among the Namibian population or Namibian businesses — before introducing further affirmative action laws. Instead, it appears that government has often sought inspiration from distant examples. The mixed outcomes of affirmative action policies in Malaysia are discussed below, followed by a broader global context at the end.

### **6.1. Introduction**

Malaysia is often cited as an inspiration for South Africa and Namibia's affirmative action policies. It is perhaps the most extreme example of affirmative action policies *favouring* a numerical majority *against* a numerical minority anywhere in the world.

In essence, Malaysia's New Economic Policy (NEP) favours the politically dominant but economically disadvantaged majority (the so-called Bumiputera which are indigenous Malays

and other indigenous groups) across various sectors, including education, employment, and business ownership. The NEP has been in operation for more than 50 years and is sometimes referred to as Malaysia’s “*never-ending policy*”. Although aggressively implemented, it has not managed to permanently uplift the capacity and competitiveness of the vast majority of Bumiputera. It has, however, been highly successful in creating a permanent new rentier class of politically connected elites who benefit from maintaining the status quo.

The ISEAS – Yusof Ishak Institute (formerly the Institute of Southeast Asia Studies) is a respected and leading research institution based in Singapore. It was established by an Act of Parliament in 1968. It falls under the purview of Singapore’s Ministry of Education. It has extensively researched the impact of NEP and published several peer-reviewed papers.

Dr Lee Hwok-Aun (a Senior Fellow and Co-coordinator, Malaysia Studies Programme with ISEAS – Yusof Ishak Institute) gave an insightful and balanced podcast (posted on 2 May 2024) titled “*Affirmative Action in South Africa & Malaysia: What Can We Learn?*”.<sup>6</sup>

Despite some progress, there are clearly fundamental structural problems and shortcomings in both BBBEE (for South Africa) and NEP (for Malaysia). The main criticism is that these policies, many years after they have been implemented, have not uplifted the vast majority of the population but have instead led to a new class of politically connected and economically advantaged elites that erode business confidence and hold back economic development. A comparative table of the main pitfalls are summarised as follows:

<b>Pitfall</b>	<b>Malaysia (NEP)</b>	<b>South Africa (BEE)</b>
<b>Elite Capture</b>	Benefits concentrated among well-connected Bumiputera elites	Empowerment mainly benefits politically connected Black elites
<b>No Exit Strategy</b>	NEP intended to be temporary but became indefinite	BEE lacks clear endpoint; targets adjusted without overall time-bound goals

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<sup>6</sup> <https://www.bfm.my/content/podcast/affirmative-action-in-south-africa-and-malaysia-what-can-we-learn>

<b>Pitfall</b>	<b>Malaysia (NEP)</b>	<b>South Africa (BEE)</b>
<b>Meritocracy Undermined</b>	Race-based quotas for university admissions and business contracts	Employment equity targets can bypass merit, especially in public tenders
<b>Policy Abuse (Fronting)</b>	Less common, but cronyism & rent-seeking persist	Widespread fronting – black individuals used as ‘faces’ without real ownership
<b>Bureaucratic Burden</b>	Complex compliance measures for public contracts	Firms face onerous scorecards, documentation, & regulatory reporting
<b>Social Division</b>	Perceived unfairness by minorities; sense of entitlement among some Bumiputera	Growing resentment across races; racial categories remain institutionalized
<b>Neglect of Structural Issues</b>	Focus on equity ownership over broader economic empowerment	Little focus on public education, healthcare, & rural infrastructure
<b>Economic Distortion</b>	Market inefficiencies due to race-based preferences in business deals	Government procurement skewed; inefficiencies in state-owned enterprises

## **6.2. Malaysia’s New Economic Policy and Affirmative Action: A remedy in need of a rethink**

Dr Lee Hwok-Aun also argues that Malaysia’s NEP lacked a systematic articulation of policy objectives, instruments and outcomes. There has been progress in facilitating Bumiputera access, participation and upward mobility in the four designated policy sectors. However, recent discourses have popularised misguided notions of reform that conflate the NEP’s twin elements, and omit attention to the decisive shortfall of affirmative action – its inefficacy in building capability and competitiveness among the Bumiputera beneficiaries, which are requisite for Malaysia to attain the ultimate NEP goals. He argues that Malaysia must fundamentally rethink affirmative action going forward.<sup>7</sup>

<sup>7</sup> ISEAS-Yusof Ishak Institute, Final draft published as a chapter in Handbook on Economics of Discrimination and Affirmative Action, edited by Ashwini Deshpande, pp. 818-840, Singapore: Springer.

There are lessons for other countries from Malaysia's experience. Dr Lee Hwok-Aun sets out three broad conclusions that are profoundly relevant to Namibia. If we do look for inspiration in Malaysia, then we should also pay attention to what went wrong so that we avoid making the same costly mistakes.

What are the lessons? They are quoted below (verbatim) (own emphasis):

- First, country context profoundly matters. Malaysia's socioeconomic disparities demanded more extensive intervention than is necessary in most countries, but its constitutional provisions for Bumiputera preference and political imperatives also created conditions for more aggressive and exclusivist forms of action. Malaysia's narrowing of inter-racial inequalities and promotion of Bumiputera socioeconomic advancement, which may stand out positively in comparative study, have been attained through overt preferential treatment and a wide range of racially exclusive programmes. Malaysia can benefit from a greater self-awareness of the potential and peril of its particular modes of affirmative action; other countries must view the operational aspects of Malaysia's policy with circumspection.
- Second, it is imperative to apply a systematic framework that: (1) clarifies affirmative action's principal objectives of increasing a disadvantaged group's representation in specific areas, the extent of which should correspond with each country's historical and present context; (2) recognizes the supplementary effects of economic growth, employment generation, socioeconomic development, and poverty reduction. Malaysia's NEP laid out a judicious template that distinguished poverty eradication regardless of race from social restructuring that involved Bumiputera-targeting. However, these distinct policy mainstays have become conflated, such that assistance for the poor is repeatedly invoked as a systemic alternative to affirmative action, instead of a complement and reinforcement. The scope and interaction of race-based preferential treatment and class- or need-based preferential treatment also warrant clarity and rigour. In some, but not all, affirmative action sectors, socioeconomic disadvantage can be increasingly applied to foster more equitable distribution within the beneficiary group, or even to increasingly operate in place of race-based preferences. Such options are much more applicable to higher education and microfinance, while in

certain policy sectors, notably employment and enterprise development, selecting Bumiputeras based on ability and potential, and limiting repeat reception of preferential treatment, present more productive and constructive paths forward.

- Third, the design, conduct and analysis of affirmative action must be mindful of specific structures and constraints of the major policy sectors – higher education, high-level occupations, enterprise and ownership – and of the further policy goal of broadly cultivating capability, competitiveness and confidence. This lesson also derives more from what Malaysia has not done; the country did not start out with a systematic conception of the core problems, objectives and instruments of AA, and hence has significantly lacked direction and coherence. While various policies since the NEP have promoted opportunity and participation over five decades, the country has fallen short in the paramount goal of capability development. Affirmative action in Malaysia, driven by constitutional foundations, political imperatives and socioeconomic conditions, passes the 50th anniversary since the policy momentarily expanded under the New Economic Policy. The NEP has significantly remedied racial disparities, particularly by increasing Bumiputera access, participation and mobility, in higher education, high-level occupations, enterprise and ownership. Malaysia must make progress such that Bumiputeras can undertake appropriate change and roll back of quotas and overt preferences, because the community has become sufficiently empowered and such interventions are no longer necessary. This undoubtedly lofty ambition also aligns with the constitutional provisions for affirmative action, which are conditional on the necessity for such extraordinary measures. The imperative of fostering equitable group representation, especially in public universities, government departments, and decision-making positions, will remain. However, Malaysia can pursue such objectives through less divisive means besides racial quotas and overt preferences. Moving in these directions, however, requires a systematic rethink, and a rekindling of the NEP's original aspiration for the Bumiputeras to be full partners in the economic life of the nation.

### **6.3. Affirmative Action at 50 in Malaysia.: A brief history and evaluation of the NEP, the never-ending policy**

James Chin is a Professor of Asian Studies and inaugural Director of the Asia Institute at the University of Tasmania. He published a condensed and insightful article on the NEP (title above) in 2021 which is still relevant today and worthwhile reposting verbatim because of its potential parallels with the situation in Namibia.<sup>8</sup>

“This year marks the 50th anniversary of the most important public policy ever implemented in Malaysia, the New Economic Policy (NEP). In American terms, the closest analogy I can think of is the Voting Rights Act that ended the mass disenfranchisement of African Americans in the South.

The NEP—which was presented as affirmative action for the country’s Malay Muslim majority—has altered the political landscape forever. For Malaysians, unfortunately, it has also poisoned ethnic and personal relations in a way that now defines the country’s polity and economy.

Malaysia is a small peninsular nation in Southeast Asia with a population of 33 million, located south of Thailand and north of Indonesia. About 60% of the population are Malays and Muslims.

The bulk of the non-Malays are Chinese (about 25% of the population) and Indians (about 7%). With its ethnically and religiously mixed population, Malaysia remained a British colony until it negotiated its independence in 1957 and became the Federation of Malaysia in 1963. In 1969, widespread ethnic riots broke out after a disputed election, and thousands died. The country was put under emergency rule and parliament was suspended. In 1971 parliament was restored, and the government decided that the cause of the riots was the yawning economic disparity between Malays and non-Malays. The Malay share of corporate wealth then was estimated to be 2.4%, and the Chinese 34%, with the remainder said to rest in foreign hands. Non-Malays also dominated the professions, while Malays mostly ran the civil service and the security services.

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<sup>8</sup> <https://www.tabletmag.com/sections/news/articles/affirmative-action-malaysia-nep-james-chin>

This racial divide in Malaysia's economy and society was a real and largely deliberate artifact of British colonial rule, which imported both Chinese and Indians to help run the economy under the theory that they would be easier for the British to control. After Malaysia became independent, many Chinese and Indians stayed, using their existing skill sets, prior advantages, and personal and family connections to become dominant in many nongovernment sectors. To remedy this situation, the government promulgated the NEP in 1971. The NEP had two main aims: to eradicate poverty regardless of race, and to "restructure society" so that all ethnic groups would be represented in every profession and throughout the economy.

Initially the policy had wide public support, as the political establishment realized that political stability depended on all ethnic groups having a stake in the economy. The Malay community was legally given a 30% minimum share across all economic and social spheres, with quotas imposed to ensure that it was represented in all professions. Many government procurements and licenses were reserved for Malay businesses. The establishment recognized that the situation of the Malay community was very much a legacy of colonialism, and that an affirmative action program like the NEP could 'correct' a historical inequality.

Within a short time, the NEP program went from being a redistributionist tool intended to correct a specific set of historical wrongs to becoming a monster with a life of its own. As the 1970s wore on, the feeling rose among the Malay establishment that the country's multiracial experiment was not working for them; instead, they wanted to reconstitute Malaysia as a Malay state. As the NEP set aside billions to promote the Malay community via direct subsidies, the country's Malay elite quickly found that almost anything could be justified in the name of "Malay rights" and "the Malay Agenda." Suddenly, all sorts of programs not related to the original NEP began to appear. Housing developers began to offer a discount to Malay property buyers. Banks were told they had to loan a certain percentage to Malay businesses, and that certain government contracts could only be awarded to Malay businesses. The most generous overseas scholarships were reserved for Malay students, and the government poured billions into building a special university that would only take Malays and other indigenous students. This university is currently the largest in the country, with branch campuses in each of Malaysia's 13 states.

The new ethnic basis of the Malaysian economy and society in turn gave rise to an official national narrative in which the Malays were the indigenous people of Malaysia and thus entitled to certain benefits, while the Chinese and Indians were unofficially “pendatang,” or “newcomers.” In plain English, the Malaysian house was to be owned by Malays, while Chinese and Indians were to be seen as guests who had to follow the owner’s rules. This all-encompassing ideology became widely known as “Ketuanan Melayu,” meaning Malay Supremacy. In administrative terms, the government labelled Malays and other indigenous tribes as “bumiputera,” a Sanskrit term meaning “sons of the soil,” and all others “non-bumiputera.” This sent a powerful signal to the country that more than half the population was effectively “chosen,” while the rest were considered to have less than full citizenship. All government programs were henceforth designed to help and enhance the bumiputera and thus lent legitimacy to Malaysia’s new form of institutional racism. The words “for bumiputera only” became standard in advertisements and media. In Malaysia, this was all considered to be normal.

You’d think that the Malay population would have been very pleased that the government was now officially behind them 110%, pushing them swiftly up the economic ladder, helping them dominate all professions, and putting the Malay middle class on track to hold the largest share of the country’s wealth, which it now does. This ongoing transfer of wealth from non-Malays to Malays over the past 50 years received an added boost when select Malays were given opportunities to own large corporations via the privatization of state assets in the 1980s and 1990s, in tandem with the worldwide neoliberal push to impose private sector discipline on previously state-run enterprises. Overnight, several hundred Malay millionaires and even the odd Malay tycoon came into being by riding the government privatization gravy train. However, the overwhelming tone of public discourse throughout this period was of Malay resentment.

A close inspection suggests that a different kind of top-down politics was running in parallel to Malaysia’s great social engineering program. Until the mid-2000s, large companies that wanted to list on the Malaysian stock exchange were legally required to set aside 30% of their shareholdings for government-approved Malay buyers. Combined with the system of exclusive Malay-only permits, licenses, and easy loans, several Malay businessmen took the easy route to ‘success.’ Many of the Malay businessmen who were given preferential shares, permits, and licenses promptly sold them to non-Malays for instant profits, defeating the purpose of helping

the Malays gain a permanent foothold in the economy by developing their own ventures and skills.

Worse was to come. The Malay “businessmen” who profited hugely from the NEP soon became wholly dependent on government contracts and patronage, to which they now felt entitled. Their business model was simply the continuation of the “Malay Agenda”: the constant stoking of popular Malay fears about non-Malay economic dominance, which served to advance the Malay elite’s claims that government must underwrite their fair economic share through state intervention. Those non-Malay businessmen who wanted government contracts relied on the “Ali Baba” business model, which required a joint venture. But the venture was joint only on paper, where the Malay “Ali” was the majority owner of a company that was in fact run day-to-day by the non-Malay (usually Chinese) “Baba.” These “Malay companies” would then bid for and typically win lucrative contracts from government procurement programs that were earmarked “for bumiputra only.”

In theory, the government’s Malay Agenda was triumphant in creating a large Malay share of the national economy. In practice, most of the “Alis” did not know how to run the businesses they were putatively leading. What they did understand was how to lobby the government on the importance of maintaining its affirmative action programs in perpetuity. One important and intentional side effect of Malaysia’s rent-seeking economy has been the use of the NEP to enrich the dominant political party, the United Malays National Organization (UMNO). Like all ruling parties, the UMNO is constantly on the lookout for money to maintain its machinery. It would not be wrong to suggest that the UMNO needs the businessmen as much as the businessmen need the UMNO. It is a transactional relationship with simple and clear rules that follow.

The UMNO expects the Malay businessmen it helps via the NEP to donate to the party, especially during elections. It has become, in the lexicon of business schools, a win-win situation for the political patron and the business client. This rent-seeking ecosystem is self-sustaining. The NEP gives the UMNO unlimited opportunities to “uplift” Malays, which expand the party’s power via funds from those opportunities, which it then lavishes on the special class of businessmen who owe their success to the ruling party and its racial theories. The costs of this system go well beyond heavy undeclared taxes that benefit a small coterie of do-nothing businessmen and spread resentment and distrust across all levels of society. The awarding of all NEP benefits,

from student scholarships to business opportunities, to self-defined bumiputera creates a high degree of bitterness among the non-Malay minority from an early age. A non-Malay finishing high school knows instinctively that his chances of entering public institutions of higher education are worse than his Malay classmate's. The quota system, even if its impact is not officially stated, ensures that the Malay student will have an upper hand — always. The same goes for scholarships. It does not even matter if a Malay student's parents are millionaires — he or she is still likely to get the scholarship and university admission earmarked for bumiputera.

Unsurprisingly, the institutionalization of discrimination against non-Malays in every aspect of Malaysian life has led to a notable brain drain among non-Malays, who often refer to themselves as “nons.” For many Malaysians of Chinese and Indian origin, the best possible solution to the problem of racist affirmative action policies is to move to another country, where they will face less ethnic discrimination and where meritocracy is at least more highly regarded. Since the introduction of the NEP, it is estimated that more than two million Malaysians, at least 90% of whom are non-Malays, have left Malaysia. Many have moved south to Singapore—a city-state on the Malaysian peninsula run by a Western-facing Chinese majority. A standard joke in Singapore is that Malaysian Chinese and Indians built it to show their former country what it lost by pursuing a race-based society.

Malaysia's ongoing brain drain is significant for a country where the labor force currently is only 16 million, not to mention that those who manage to migrate are usually the most educated and talented. Many of the countries that accept Malaysian Indians and Chinese migrants —such as Australia, Canada, and New Zealand — have a “points system” that takes in only those with work experience, tertiary education, and some capital.

#### **6.4. What lessons can we glean from 50 years of the NEP in Malaysia?**

First, affirmative action policies designed to benefit members of a single race really creates two classes of beneficiaries. The first class is the intended recipients — the disadvantaged members of the target group. The second class is members of the same racial group who are not disadvantaged, but who nevertheless receive new and expanded opportunities. More often than not, the second class — which already had capital, knowledge, and connections — is able to take advantage of the program by steering the benefits to itself. In Malaysia, what happened

next was not an accident, but a product of the system's design: Relatively quickly, the "successful" members of the previously disadvantaged class became rent-seekers—a powerful lobby for continually adding new redistribution schemes and carve outs. While all this was done in the name of justice, ethnic solidarity, and righting past wrongs (and in some cases, of racial supremacy), in almost all cases the new programs became vehicles for easy money, which in turn augmented the rent-seeking lobby and its political benefactors.

Second, an affirmative action policy based on a single racial criterion inevitably creates tension with other ethnic groups, some of whom may have millions of equally poor or otherwise disadvantaged members but cannot access government assistance. These groups may even come to be seen as unjustly advantaged or exploitative by virtue of belonging to racial categories that the state does not regard as disadvantaged. This kind of policy naturally breeds racial resentments. Over time, the political climate becomes racially polarized and logical discussion can no longer take place. Given the profound social, technological, and economic changes during the previous 50 years, there is general agreement among the Malaysian elite that NEP reform is inevitable. But there is no consensus on how to change the program's core: the provision of state benefits based on racial criterion. Those who argue for reform say the new Malay rich and middle class should be excluded from NEP benefits they no longer need, and that more targeted help should be directed to poor Malays.

The overwhelming consensus among the non-Malay political establishment is that NEP has outlived its usefulness. A new policy should be adopted (rather than simply modifying the NEP), and that the most important guiding principle for the new policy must be needs-based benefits. In other words, an affirmative action policy that is colourblind. The non-Malay establishment argues that even with a colourblind policy, Malays would still benefit the most, as they are the largest group among the country's disadvantaged. They believe that by adopting colourblind economic policy, Malaysia can finally work toward reconciliation between Malays and non-Malays, to the greater advantage of Malaysian society and economic development. We believe that the position taken by the non-Malays is rather naïve and unrealistic for the simple reason that the Malay establishment's very survival depends on rent-seeking from the NEP. The same is true for the Malay middle class, which sees the NEP as a means to pass the same favourable system they enjoyed onto their children. They do not want their children to have to compete — and why should they? In any case, after half a century of NEP, it has become impossible to hold

a rational discussion on this topic. Younger Malays born into the NEP era see it as their birthright. For them, the prospect of its reform is not even an afterthought. They see their privileged position as a normal part of life.

For an example of another country that is repeating Malaysia's mistake, look no further than South Africa. When the African National Congress (ANC) took power, one of the first things it did was to conduct a "study tour" of Malaysia. Shortly after that, the Black Economic Empowerment (BEE) policy, mirroring the NEP, was adopted. The same abuse and rent-seeking were repeated in South Africa. Similar to Malaysia, no senior ANC politician dares to question BEE. As in Malaysia, BEE has only grown and expanded. There are no easy answers to the problems caused by affirmative action policies based on race. However, the South African government should clearly take two steps to avoid the Malaysian path: The first is to narrow the size of the beneficiary class, "a majority of the country" is a national death sentence for economic growth. This is evident from the socio-economic dependency of approximately 22 million on social grants, the stagnation of South African economy and one of the highest unemployment rates in the world. The second is to set an end date in stone. These steps will not stop rent-seeking behaviour, but they may limit its unsustainable escalation. Once politicians control any program, it become a Never-Ending Policy.

## **6.5 Affirmative Action in the Global Context**

Arguments for and against affirmative action have provoked controversy and even bloodshed, for a longer or a shorter period, in the most disparate societies, scattered around the world. India, Nigeria, Australia, Guyana, Malaysia, Sri Lanka, Pakistan, and Indonesia are just some of the countries where some groups received sanctioned preferences over others. Professor Thomas Sowell, a renowned Economist and author of more than 40 books, have researched and written extensively about affirmative action. He found that the same general principle of government apportionment of coveted positions, to supersede the competition of the marketplace or of academia, was of included in laws used to restrict the opportunities of Jews in prewar Central and Eastern Europe. Paraphrasing Sowell's contribution towards the debate about affirmative action follows<sup>9</sup>.

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<sup>9</sup> <https://www.stephenhicks.org/wp-content/uploads/2018/01/Sowell-Affirmative-Action-Disaster-text.pdf>

It is common for minorities to be overrepresented and/or dominant, in competitive industries where they have no power to prevent other groups from creating rival businesses. For example, Jewish prominence in textile in the United States. However, also Jewish prominence in Argentina and Chile, did not reflect any ability to prevent other Americans, Argentines, or Chileans from manufacturing garments. It simply emphasised the advantages of the Jews having brought needle-trade skills and experience with them from Eastern Europe. The fact that Jews owned more than half of clothing stores in the mid-19th-century in Melbourne, reflected that similar advantage, and not any ability preventing other Australians from selling clothes. German minorities have been dominant as pioneers in piano manufacturing in colonial America, czarist Russia, Australia, France, and England. Italian fishermen, Japanese farmers, and Irish politicians have been minority groups with special success in special fields in various countries, without any cunning ability to prevent others entering these industries.

Based on the above evidence, it can be deduced that groups who are in no position to discriminate against anybody have often been overrepresented in coveted positions. For example, the Chinese in Malaysian universities, the Tamils in Sri Lankan universities, the southerners in Nigerian universities, all during the 1960's, including Asians in American universities today. According to Professor Sowell<sup>10</sup>, these are just some of the minorities of whom this has been true. Many other powerless minorities have dominated specific industries or sectors of the economy, e.g., the intellectual community, or government employment.

For different groups, it is common to rely on different mobility ladders. Some the military, some the bureaucracy, and some parts of the private sector. Even within the military, different branches tend to have different racial or ethnic compositions. Powerless minorities have been over-represented and even dominant in specific branches of the military or the police. For example, the Chinese in Malaysia's air force and as detectives in the police force.

## **6.6 Conclusion and policy lessons for Namibia**

Based on Malaysia's failed NEP policy and other countries, groups receiving preferences in countries have varied, from locally or nationally dominant groups in some countries to the

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<sup>10</sup> <https://www.stephenhicks.org/wp-content/uploads/2018/01/Sowell-Affirmative-Action-Disaster-text.pdf>

poorest. Such vast disparities in settings and people make it all the more significant that there are common patterns among these countries — patterns and subsequent lessons with critical implications for “affirmative-action” policies in Namibia. Among these patterns and lessons are the following:

The first lesson is that any overly broad approach to affirmative action not grounded in pragmatic or objective reality is doomed to fail. To paraphrase Professor James Chin: It is a national death sentence to extend to the intended beneficiary class to the majority of the country.

It makes much more sense to have a narrow and targeted approach, based on means testing and aimed at a smaller subset of beneficiaries.

The second lesson is that affirmative action, if not applied correctly, can easily lead to the creation of an elite rentier class that in effect lives off government tenders and does little to further empower those who need it most. It pushes competency to the margins and rewards political connections rather than actual economic enterprise. Within the groups designated by government as recipients of preferential treatment, the benefits have usually gone disproportionately to those members already more fortunate.

The third lesson is that affirmative action, even when explicitly and repeatedly defined as “temporary,” have tended not only to persist but also to expand in scope, either embracing more groups or spreading to wider areas for the same groups, or both. Even preferential programs established with legally mandated cut-off dates, as in India and Pakistan, have continued far beyond those dates by subsequent extensions. Affirmative action when left mainly in the hands of politicians, can easily become a never-ending policy that thrives on a parasitic symbiotic relationship between the current ruling class of politicians and well-connected elites. There is also a significant risk of policy creep and bureaucratic expansion is the case with the Employment Equity Bill.

The fourth lesson is that group polarisation has increased in lieu of preferential programs, with non-preferred groups or formerly “advantaged” groups reacting adversely, in ways ranging from

political backlash to mob violence and civil war. Discriminating against 0.4% of white males in Namibia to protect 99.6% of the majority is not pragmatic or morally feasible.

The fifth lesson is that fraudulent claims of belonging to the designated beneficiary groups have been widespread and have taken several manifestations in various countries. If Namibia is committed to reduce corruption, then affirmative action should be reviewed in terms of lesson one, namely, to base it on merit and needs, within the disadvantaged group so that those already advantageous within such “formerly disadvantaged group(s)”, should be excluded from further undue beneficitation at the expense of those left behind as the most needy and still being “disadvantaged”.

Over time, Namibia’s employment equity and affirmative action policy has expanded in scope and complexity, creating more red tape and making compliance costly for businesses. A clear example of this is the gradual reduction of “relevant employer” for compliance and reporting purposes from those who employ 50 or more people, to 25, and finally, 10. Not even South Africa (which has a much larger economy than Namibia) applies the 10-person threshold for affirmative action employment equity policies. An endless array of numerical targets, compliance obligations, inspections, reports and scorecards become an end in itself rather than tools for transformation.

The more sensible approach would be to focus on needs-based policies rather than blanket race-based policies. Also, employment equity and affirmative action policies need to be time-bound. It should have review periods and clear goals to avoid indefinite extension. It is also critical to invest in capability. This means prioritise education, training, and entrepreneurship at the grassroots level.

Finally, it is important to safeguard against abuse by a new class of politically connected (and permanently empowered) elites in the designated groups.

## **7. Unpacking The Employment Equity Commission’s Reports**

During 2019 and prior to it, the media used to report regularly on the Employment Equity Commissioner’s annual reports. The last report was published in 2018. These reports always

painted a damning picture of Namibia's "inequitable" private sector employment environment, with very emotionally charged captions and headlines. But does the actual data in these same reports support such damning narratives or is it a ruse to maintain relevance?

As illustrated in this report, less than 0.5% of the Namibian population (about 14,690 persons) make up the "target" of the Employment Equity Bill. That is a statistically insignificant number. It should be adequate reason to abandon the policy and instead have a singular focus on job creation and implementing conducive business economic development policies. Even if every single white male is replaced by someone in the Designated Group, it would not significantly improve the overall employment prospects of Namibians. Yet our policymakers deem it wise to double down and introduce more layers of complexity and compliance on an already onerous reporting regime.

Section 18 (1) of the Employment Equity Bill states that the Employment Equity Commission shall compile and submit an annual report to the Minister responsible for Labour not later than four (4) months after the end of 31 March of each year on its activities for the previous year. It mirrors Section 16 of the existing Act.

The most recent publicly available Employment Equity Commission annual report was for 2017/2018.

### **7.1. False Narratives**

There are plenty of false narrative examples created by the Employment Equity Commission in its report. In the "foreword", the Employment Equity Commission states: *"However, the employee statistics gleaned from the employers' affirmative action reports during the period under review, revealed that the objective of transforming the Namibian workforce into an equitable and a demographically representative one, has not yet been achieved. There is therefore, a need for a thorough reflection and deliberate refocus on new implementation strategies of affirmative action programmes at every workplace for better results. It is not acceptable that after 19 years of affirmative action implementation that white employees, who constitute a mere 4% of the workforce, occupy 56% of positions at the Executive Director level and 26% of management positions."*

The Employment Equity Bill states that persons in Designated Groups (basically everybody except white males) must “*enjoy equal employment opportunities at all levels of employment and are equitably represented in the workforce of a relevant employer*”.

The Employment Equity Bill does not expressly provide for exact demographic representation, but it is implied. There is a difference between “*equitable representation*” and “*demographic representation*”. “*Equitable*” can never mean “*exactly proportional*”. Equitable representation means representation that is fair and reasonable (treating everyone in an equal way). If “*equitable representation*” were to mean “*demographic representation*” - and taken to its logical conclusion - it would mean that there is an employment ceiling on all groups (carved out primarily along racial and tribal lines). There will, for instance, be a ceiling on women to occupy no more than 50% of positions, Ovaherero no more than 5.9% of positions, Nama no more than 3.1% of positions, Baster no more than 1.5% of positions, etc. Does this sound fair and reasonable? Of course not. It is patently absurd.

The Employment Equity Commission proceeds to state that white employees occupy a certain percentage of positions at the top (not only white males). Women form part of the Designated Group, which includes white woman. So according to the Employment Equity Commission’s logic it is deplorable that white women are employed at the top, this while the law was specifically designed to favour white woman alongside all other others in the designated group. The Employment Equity Commission’s interpretation of the statistics thus fly against the very same law which it administers and clearly creates a narrative which is solely race-based. In the same breath, the Employment Equity Commission calls for policy change considering this false narrative.

We now turn to the statistics in the report. According to the Employment Equity Commission’s Report, Namibia’s relevant employers at the time (meaning employers who had more than 25 employees) reported a total cumulative workforce of 275,679 employees (excluding non-Namibians). Of these, 6,038 employees were categorized as “*previously advantaged males*” (which is not a classification found anywhere in the Act). This effectively means that the entire legislative and state machinery supporting affirmative action is geared towards diluting 2,19% of the total reportable workforce in Namibia to achieve “*demographic representation*”.

EPRA's concerns with attempts to achieve equality of outcomes, as opposed to equality of opportunity, is dealt with in more detail in our previous reports (which can be obtained at [www.epra.cc/downloads](http://www.epra.cc/downloads)). For now, suffice to say that large-scale social engineering attempts to achieve equality of outcome are always doomed to fail. Nevertheless, in terms of total/cumulative workforce, Namibia quite obviously surpassed the "targets" for racial representation in the workforce long ago (although, as stated before, this was never a statutory target). For what purpose the Employment Equity Bill will now be used is unclear. However, it is highly probable that the continued drive towards the false narrative of demographic representation could be used to limit representation by all racial groups (i.e. Herero limited to 5.9%).

If we accept that there is broad compliance with affirmative action - at least insofar as the total/cumulative workforce is concerned - then what is left for the Employment Equity Commission to do? The answer is that they will have to delve progressively deeper into every subset of the entire employment universe to maintain relevance. This means looking at categories of each job industry as well as levels of employment within each industry to extrapolate actual (or perceived) non-compliance. This is precisely what happened.

For example, even though the Employment Equity Commission Report concludes that *"... the current workforce demographic distribution ... clearly showed a satisfactory departure from the workforce profile demographics that clearly mirrored the past racial, gender and disability discrimination"* it also states that *"the under-representation of persons in designated groups at the top occupational levels is a stark reminder of the challenges and the hard work that lies (sic) ahead before a meaningful level of workforce transformation is achieved."*

The Employment Equity Commission categorizes permanent employees as either as: -

- (a) Executive Directors
- (b) Senior Management
- (c) Middle Management
- (d) Specialised/skilled/supervisory
- (e) Skilled
- (f) Semi-skilled, or
- (g) Unskilled.

It is patently clear from the Employment Equity Commission's dataset that "*previously advantaged males*" are vastly underrepresented in categories (d) to (g). Putting it another way, if the "*target*" of affirmative action was to achieve or approximate demographic representation in these job categories, then the "*target*" has been exceeded by a very comfortable margin. In fact, one wonders why the Employment Equity Commission is not concerned that whites are by an exceptionally large margin underrepresented in categories (d) to (e), if demographic representation is to be the target? This only leaves categories (a) to (c).

It is true that the picture at, for lack of a better description, "the top of the employment food chain" changes somewhat: In category (c) we find that 13,61% of Middle Management positions are held by 1,404 "*previously advantaged males*", whereas 4,274 Middle Management positions are held by "*previously disadvantaged males*" and 3,655 by "*previously disadvantaged women*". This is presumably close enough to the somewhat nebulous "*demographic representation*" threshold to pass EEC muster (note not statutory compliance) and can be discounted for the sake of argument. That only leaves categories (b) and (a) remaining.

The Employment Equity Commission's report is based on 923 affirmative action reports received from relevant employers. In category (b), 992 Senior Management positions are held by "*previously advantaged males*", 1,039 by "*previously disadvantaged males*" and 699 by "*previously disadvantaged women*". Therefore, on average, 1.07 "*previously advantaged males*" are employed in Senior Management positions per employer. In category (a), 579 Executive Director positions are held by "*previously advantaged males*", 294 by "*previously disadvantaged males*" and 92 by "*previously disadvantaged women*". Therefore, on average, 0.63 "*previously advantaged males*" are employed in Executive Director positions per employer. The Employment Equity Commission's Report makes no mention of the relationship between Executive Directors and their respective "*relevant employers*". It is certainly not beyond the realm of possibility that many company owners chose to stay on and serve as Executive Directors in the companies they started. We hope it is acceptable to allow a founder or owner of a business to be involved in the management of his or her company. If not, there are deeper structural problems with the affirmative action laws, and constitutional, democratic values, than this report is addressing.

We assume that anyone in an Executive Director or Senior Management position has the required skill, competence and expertise to be appointed to, and crucially maintain, their position in these companies. This means they will all (bar a few outliers) be professionally qualified, competent, conscientious, and have a proven track record of success. In other words, only a small subsection of employees will ever become Senior Managers or Executive Directors. In fact, there are only 1,571 “*previously advantaged males*” in these positions in the entire country (as opposed to 1,333 “*previously disadvantaged males*” and 791 “*previously disadvantaged women*”). This effectively means that the entire legislative and state machinery supporting affirmative action is maintained to target 1,571 of the total reportable workforce in Namibia to achieve “*demographic representation*” – which is in any event a narrative not enforced or even supported by legislation.

The entire legislative and state machinery supporting affirmative action is maintained to reduce the roughly one “*previously advantaged male*” employed, on average, by the 923 relevant employers. Even if every single one of these positions was filled by “*previously disadvantaged males*” or “*previously disadvantaged women*” then the empowerment outcome for the overall population in Namibia is completely insignificant. Then the next crucial question must be asked: At what expense, to business in general and the Government fiscus, is the Employment Equity Bill targeting (i.e., actively working towards their demotion or dismissal) of these 1,571 individuals, while it is likely that a substantial number of them are simply managing their own businesses?

## **7.2. Complaints received by the Employment Equity Commission**

Another false narrative in the Employment Equity Commission’s report is the “*scourge of racism*” by “*white owned corporates*” (p. 10). According to the Employment Equity Commission’s, Report a total of 62 cases were registered against employers during the 2017/2018 reporting year. It appears that most relate to the late filing of affirmative action reports. Nevertheless, the Employment Equity Commission boldly concludes that these complaints “*confirmed that Namibian citizens do not enjoy equal employment opportunities as envisaged by labour and employment laws.*”

The Employment Equity Commission goes on to say that “*the complaints also confirmed that the scourge of racism continued to influence employment decisions in the white-owned corporates*

*in Namibia, while the verbal abuse and racial insults to black employees fermented racial and industrial tensions at the workplace.”* No evidence is presented in the Employment Equity Commission Report to support these inflammatory statements. By the Employment Equity Commission’s own admission, 14 relevant employers were charged, two charges were withdrawn, one relevant employer paid an admission of guilt fine and 45 of the registered cases are still under investigation. Whilst some racial bias undoubtedly exists, there is simply no evidence of wide-ranging systemic racial prejudice in Namibia’s employment landscape. The Employment Equity Commission’s narrative is not supported by facts. We must conclude that the said mentioned false narrative must be for some other motive. What is clear, is that this false narrative is extremely dangerous, both for the fairly strong harmony we enjoy as Namibians, but also for future policies.

## **8. Conclusion**

Affirmative action was a necessary intervention in post-independence Namibia to correct deep historical injustices. However, in 2025, with Namibia facing runaway unemployment of 55%, stagnant private sector growth, an urgent need exists for investment. The continued pursuit of rigid, race-based employment engineering is counterproductive to address disparities within the formerly disadvantaged.

The Employment Equity Bill, despite good intentions, is a step in the wrong direction. It imposes a costly, bureaucratic, and punitive system that will deter entrepreneurship, reduce business confidence, and ultimately harm the very people it claims to empower. Instead of fostering unity and opportunity, Namibia’s Employment Equity Bill risks creating deeper social fragmentation and economic stagnation. Namibia is an example of racial based employment policies with the purpose of cosmic justice in the manifestation of equal outcomes at all costs, not based on merit, performance and/or needs. Global evidence has been provided of the failures of affirmative action in several countries. Throughout history, some minority groups have been overrepresented and/or even dominant due to special skills and experience without preventing any others from entering business or professions.

Namibia’s future prosperity lies not in perpetuating outdated models of demographic engineering, but in building an inclusive economy where merit, innovation, and enterprise are

rewarded. True empowerment comes from allowing the private sector to conduct business with the least restrictions for creating jobs, supporting education and skills development, encouraging entrepreneurship, and ensuring that every Namibian — regardless of background — has a real chance to succeed.

Is it not time to abandon destructive, wasteful and divisive policies? Is it not time to focus on reducing inflexible and over bureaucratic employment policies hampering business? Is it not time for incentivising business for sustainable job creation, for the benefit of all Namibians?

The economy and business are not limited in size, it is infinite, based on minimum restrictions, and maximum incentives.

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