

Cawe, Ayabonga

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"Delangokubona" and the distribution of rents and opportunity:  
An exploration of tensions over race-based policies of redress and  
redistribution in South Africa

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WIDER Working Paper 2022/58

## **‘Delangokubona’ and the distribution of rents and opportunity**

An exploration of tensions over race-based policies of redress and redistribution in South Africa

Ayabonga Cawe\*

June 2022

**Abstract:** Capital spending on infrastructure presents a significant counter-cyclical tool, however contested it might be in a society as unequal as South Africa. The history of racial capitalism, race-based exclusion from economic participation, and an enduring political economy based on the concentration of capital, product, and service markets has given rise to a post-apartheid ‘politics of entry’ that mobilizes both formal and informal adaptations of redistributive policies aimed at ensuring redress of past injustices and access and participation by small and medium-sized enterprises owned by historically disadvantaged people. This is observed in stark form in the capital spending on economic and social infrastructure, which the South African government envisages as the ‘flywheel’ of the country’s economic reconstruction and recovery. Applying a combination of tools from new institutional economics, political sociology, and heterodox political economy frameworks, this paper considers the ‘informal’ and at times violent adaptation of policy, here defined as the ‘Delangokubona phenomenon’, which uses both formal mechanisms and the threat (perceived or real) of violent disruption to negotiate access to policy-sanctioned economic ‘rents’ under the auspices of ‘black economic empowerment’ in public infrastructure projects.

**Key words:** redistribution, redress, economic rents, public infrastructure, black economic empowerment

**JEL classification:** O16, O17, O55, P16

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\* School of Economics and Finance, University of the Witwatersrand, Johannesburg, South Africa; [ayabonga@xesibeholdings.co.za](mailto:ayabonga@xesibeholdings.co.za)

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Katajanokanlaituri 6 B, 00160 Helsinki, Finland

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## 1 Introduction

Capital spending on infrastructure projects in post-apartheid South Africa has increasingly become a contested terrain. On the one hand, it presents a significant counter-cyclical tool injecting stimulus into manufacturing subsectors such as steel, ceramics, cement, and glass. On the other, it is a site of political economy contests, in a post-apartheid ‘politics of entry’ that mobilizes formal and informal adaptations of policies aimed at redress and redistribution, such as the ‘Broad-Based Black Economic Empowerment’ programme (B-BBEE), and in particular preferential procurement to access economic rents. These contests, at the level of capital investments in new construction works in many cases, have provided a glimpse into the informal and at times violent adaptation of ‘policy’, in an enduring political economy based on the concentration of capital, product, and service markets, and persistent inequality (still along racial, gender, and class lines) of access to opportunity.

The violent disruptions in question stalled billions of rands (ZAR) in construction projects in and around the port city of eThekweni, and the approach would later spread to surrounding areas within the province and across the country. Many have labelled this approach that of a ‘construction mafia’ uninterested in formal tendering or subcontracting processes, that ‘arrives in a bakkie,<sup>1</sup> fires shots in the air and demands their share, burns equipment and pushes workers in front of moving traffic’, as described by an executive at the South African National Roads Agency (SANRAL), a state-owned company responsible for the management, maintenance, and development of the country’s national road network (Kannemeyer, in Slabbert 2018).

One of the most high-profile examples of this phenomenon occurred in 2018, when a group calling itself ‘Stakeholders’, including the Delangokubona Business Forum, a local group within the Umkhonto We Sizwe Military Veterans Association, and a local taxi association, halted a ZAR276.45m (US\$20.86m) project on the Hammarsdale Interchange on the busy N3 highway between eThekweni and Pietermaritzburg. Armed groups also disrupted the ZAR1.5bn Mtentu Bridge Project in the Eastern Cape and the Beacon Valley Housing Project in the Western Cape. All of these actions have a common set of demands—inclusion via subcontracting and job opportunities.

The year 2018 was in many ways the zenith of these groups, and one in which much disruption was observed: ‘Three men allegedly from the Delangokubona Business Forum, last week threatened to shoot contractors working on the extension of a residential estate if they do not leave the site’, read a 6 June report in the weekly Ballito-based publication *North Coast Courier* (Abrahams 2018).

A few months earlier, in February 2018, the President of the Delangokubona Business Forum, Nathi Mnyandu, speaking at a Radical Economic Transformation Conference and Expo hosted by the City of eThekweni and the Federation for Radical Economic Transformation (of which the Delangokubona Business Forum is an affiliate), recounted the genesis of the business forum, the broader ‘Federation’, and their approach as an outcome of a choice to opt out of crime and pursue legitimate business:

We were initially not interested in tenders, we used to carry guns and we would go and approach a cash in transit vehicle, break into stores, into homes or become

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<sup>1</sup> A South African colloquial term for a light pickup truck.

hitmen for hire. There are many former ‘hitmen for hire’ who are here today, who are now businesspeople. I say this, as painful as it is, because we ‘used to’ be criminals, we are no longer criminals ... we were called in by Mr Chiliza, who said, ‘Mnyandu, this thing of yours is up, we have a black government now, and the government has said everyone has a right to get a CK document,<sup>2</sup> go into business and make a livelihood. Officials in the Council must be ready for us, Mama Zandile<sup>3</sup> told us to come, she said all the business forums must come, she said she was tired of us disrupting projects.

In many ways, the use of violence, according to Mnyandu (2018), arose due to the real or perceived limitations and barriers to accessing contracts faced by small businesses. The ‘new South Africa’ in a sense opened up new arenas for ‘legitimate’ accumulation, outside of ‘breaking into stores, into homes or becoming hitmen for hire’, suggested Mnyandu. Disruption through violence, seen in this way, is a justified approach when policy is not being translated into action due to the intransigence of private sector contractors, or apathetic councillors in the case of projects undertaken by state agencies.

Here, the Preferential Procurement Regulations of 2017 served as a ‘legitimising’ regulatory and policy mechanism for some of these actions in the face of incontrovertible inequality and limited opportunity for local small and medium-sized enterprises (SMEs) to access opportunities in multi-million-rand contracts. The 2017 Regulations suggest, in Schedule 9, that, ‘if feasible to subcontract for a contract above R30 million an organ of state must apply subcontracting to advance “designated” groups’ (National Treasury 2017).

If an organ of state under these regulations applies subcontracting, it must advertise as a ‘specific tendering condition’ that the successful bidder subcontract a minimum of 30% of the value of a contract to ‘emerging micro-enterprises’ (EMEs—micro-enterprises with a turnover of less than ZAR5m), Qualifying Small Enterprises (with a turnover of less than ZAR50m and more than ZAR10m), or co-operatives 51 per cent owned by black people, youth, women, military veterans, and people living with disabilities (National Treasury 2017: 28).

I argue that the Regulations, in their interpretation of the Preferential Procurement Policy Framework Act No.5 of 2000 (‘the PPPFA’), gave rise to a series of expected and actual ‘rents’ that fall within the ambit of what can be broadly called black economic empowerment (BEE) through a requirement for contracts above ZAR30m that the state ‘apply subcontracting to advance designated groups’ (National Treasury 2017: schedule 9). Accordingly, and as Mnyandu suggested in 2018, the use of violence then follows in instances where contractors have not complied with this injunction, in both the private and the public sectors. This has, as I discuss below, given rise to an ‘informal interpretation’ of this subcontracting consideration in the adjudication and awarding of bids, as a ‘politics of entry’ into the orbit of the state and its purchasing decisions, in a political economy marked by distributive conflicts.

Moreover, I consider how the informal and at times violent mobilization of the theory, language, and policy tools of BEE (via preferential procurement) within what I call the ‘Delangokubona approach’ provides a framework to better understand the social risks that increasingly confront many private and public sector infrastructure projects across South Africa. These disruptions are enabled by particular features of the post-apartheid political economy, such as a crisis in the state’s

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<sup>2</sup> CK documents are the documents issued by the Companies and Intellectual Property Commission (CIPC) registering sole proprietors, close corporations (since phased out), and private companies.

<sup>3</sup> Zandile Gumede served as the executive mayor of eThekweni between 2016 and 2019.

ability to exercise a monopoly on violence; enduring organizational mobility around traditional, ethno-national, and other institutions; disunity in the elite coalition; and declining ‘economic rent’ opportunities in the recent period, in the form of capital spending on infrastructure, which I will discuss in some detail below.

The discussion begins with a theoretical consideration of ‘economic rents’, all of which arise from the history of institutionalized racism and concentrated product and service markets with high barriers to entry and rent seeking by incumbents that contribute to inequality in South Africa. I consider how the treatment of rents in neoclassical and heterodox economic theory helps us to understand how the violent externalities or spillovers of conflict over rent distribution disrupt building activities associated with critical infrastructure investment. In this discussion, I frame B-BBEE as a ‘rent distribution’ mechanism focused on redress and redistribution, through the resolution of past and contemporary ethnic, intra- and inter-class, and national conflict. Employing a combination of tools from new institutional economics (NIE), political sociology, and heterodox political economy frameworks, I consider the drivers of such conflict, its peculiar features, and its ‘utility’ as an avenue of entry for historically disadvantaged groups.

Second, given South Africa’s history of institutionalised racism, ‘institutional change almost always involves the creation or destruction of rents’ in distributive conflicts’ (Khan and Jomo 2000). In the case of South Africa, these distributive conflicts, in so far as they are undertaken through and within the law, are subject to opportunity and limitation. In such a context, informal institutional approaches to resolve these distributive conflicts in favour of new entrants or incumbents are attractive to economic actors only insofar as their perceived payoffs are observable. There is a common refrain in South Africa: that protest actions, for instance, turn violent because violence is a language that those who yield power often listen to rather than mild and peaceful protestations. In a sense, this captures the ‘utility’ of violence in instances where economic and political actors observe it as a viable grievance and value-capture mechanism.

Third, I consider the Delangokubona or construction mafia phenomenon as an example of ‘violence as a tactic of entry’ in the context of a ‘limited access order’ (North et al. 2007; Obadare 2013). In limited access orders, the state does not have a secure monopoly on violence, and society organizes itself to control violence through the distribution of ‘rents’ among elite groupings with a capacity and potential for violence. North et al. (2007) argue that ‘institutions’ emerge as a means to control violence through political systems that ‘create and allocate rents, arising from arrangements such as government contracts, land rights, monopolies on business activities and entry into restricted job markets’ (North et al. 2007: 2). These institutions may be reliant on other formal and informal arrangements of power relations to reproduce and sustain them, through limits set in the rent distribution framework.

For the purposes of our discussion, institutions are here defined as the ‘rules of the game’ in a society, or a set of human-devised constraints that shape human interaction, incentives, and the distribution of political and economic power (North 1990: 3). In this way, B-BBEE, employment equity, and preferential procurement, as a constellation of regulations and rules, can be seen as an institution that frames state-sanctioned policies focused on redistribution to designated groups (by ethnic, gender, and other considerations) and redress of past injustices. This institution has its own limits or ‘devised constraints’, which create insider–outsider relations that lay the basis for intense struggles over access to tenders, budgets, and jobs—‘rents’—through sometimes formal, but in many cases informal, political-economic systems. Van Holdt, in the South African case, views such an informal political-economic system as a ‘co-ordinated or planned, but pervasive and decentralised set of interlocking networks, that reinforce and compete with each other in mutually understood ways, and include the use of violence as a strategic resource’ (Van Holdt 2019: 9).

Fourth, declining capital investment spending and the crisis confronting formal mechanisms of redistribution and redress interface with growing disunity in the ‘elite coalition’, setting the stage for more fractious and desperate contests, with increasingly disruptive spillovers for communities, firms, and the broader South African political economy. One such challenge in recent times has come from AfriForum, an Afrikaner nationalist interest group or lobby. Interestingly, Schedule 9 of the 2017 preferential procurement regulations that give effect to the PPPFA was successfully challenged by AfriForum in May 2021 before the Constitutional Court, wherein the group argued that the PPPFA ‘does not empower the Minister of Finance to create pre-qualification that disqualifies bidders on BEE via pre-qualification, without recourse to their preference point score’, and ‘narrows the selection pool’, making it difficult for the ‘state to find the most capable and cost-effective tenderer’.<sup>4</sup> It is not this recent court challenge that is the subject of this article, but rather the 2017 Regulations, which have now been revised in draft form for comment by April 2022, which may give rise to a set of new regulations. Suffice to say, however, that the recent court ruling presents a challenge on the back of which even the formal mechanisms of redistribution and redress are subject to recasting and reframing, creating further uncertainty.

Viewed in this way, BEE serves as an interesting area of analytical inquiry that allows us to expand the scope of what kind of rent-creation or rent-destruction forms can enable or constrain an inclusive and peaceful growth path that unlocks demographic and structural transformation.

## 2 Black economic empowerment as an illustration of a race-based economic rent

### 2.1 The theory of economic rents

Economic rent is defined as income or value earned in excess of the value gains that correspond to the contribution of different factors of production. Put simply, it is the reward accruing to economic agents that is greater than their contribution to the creation of that value, or what many call ‘unearned’ income or value transfers to actors beyond their own contribution.

The theory of rents has a long history and tradition in political economy. David Ricardo viewed rents as linked to the fertility of parcels of land, and defined them as only accruing to land and not to other factors of production (Ricardo 1821). John Stuart Mill, in *The Principles of Political Economy*, suggested that rents did not arise from any particular qualitative features of any factor of production but rather were an outcome of market and social conditions. Viewed in this way, rents arise out of ‘institutions’ that emerge to mediate social and property relations (Fine 2019; Marx 1867; Mill 1878).

An alternative but related formulation within the same traditions of political economy posits rents as ‘excess returns’, as Marx suggests in his discussion of the theoretical approaches of the ‘Physiocrats’, that they saw land rent as the ‘excess value’ created over and above the labour time necessary for the reproduction of agricultural workers’ ability to work (Marx 1867). This link between surplus value over and above the social reproductive costs of labour implied that rents had distributional implications for how value is apportioned to and distributed among different classes.

The neoclassical school of economics views rents as returns in excess of a resource or factor of production over and above the owner’s opportunity cost. In this tradition, they are seen as excess returns or value transfers that occur via mechanisms incommensurate with the price mechanism.

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<sup>4</sup> Minister of Finance *v.* Afribusiness NPC [2022] ZACC 4.

Furthermore, Alchian (1991) argued that rents referred to payments for ownership of a resource, where the availability of the resource is insensitive to the size of the payment received for its use, through the use of mechanisms to limit entry, to create what are called ‘scarcity rents’. Rents which create ‘deadweight losses’ (Krueger 1974) are seen, within the neoclassical school, as ‘unproductive’ transfers. In this tradition, rents are seen not only as a distortion of the functioning of price mechanisms but as fundamentally a misallocation of resources due to institutional and political actions that distort the functioning of markets.

Rents, in this approach where they are ‘contrived artificially through government action’, are not desirable (Tollison 1982: 575). A recent article in *The Economist* (2022: 61) suggests that rents are also indicative of how ‘few markets are determined by perfect competition, such that prices reflect the marginal product emerging from different factors (i.e. land, capital and labour *inter alia*)’:

Technically speaking, an economic rent is the surplus remaining once capital and labour have been paid a market price. With perfect competition that surplus would not exist. But rents can be artificially elevated if firms win contracts at beneficial prices, form cartels to stitch up consumers or lobby governments for favourable rules. (The Economist 2022)

In this framework, the operative institutional channels for rents are monopoly profits, subsidies, tariffs, licences, and transfers (such as ‘overpriced contracts’) emanating from the ‘political mechanism’; illegal transfers by private syndicates; and short-term super-profits made by innovators before competitors imitate their advances, *inter alia*.

For the purposes of the discussion here, I use the evolutionary and heterodox interpretations of rents, as transfers that are not fundamentally inimical to growth and structural transformation. Unlike the neoclassical school, the heterodox tradition asserts that under specific conditions and institutional arrangements, economic rents can be value enhancing and contribute to developmental outcomes. In this approach, the issue is not about rents as transfers that are anathema, but rather the focus is on the ‘design’ of economic and socio-political relations envisaged in the creation of rents.

For instance, in the case of Taiwan and South Korea in the 1950s and 1960s, the allocation of ‘conditional policy rents’ aimed at accelerating technology adoption and learning and raising productivity and competitiveness in emerging sectors was a crucial element of the ‘developmental state’ experiences in those areas. Some heterodox scholars (see Amsden and Hikino 2000) have suggested that the ‘success formula’ of late industrialization has been in ‘allocating subsidies (as rents) in exchange for monitorable, result-oriented standards’. This link between access to rents and specific commercial and industrial reciprocal performance requirements is what distinguishes rents from what might be seen as ‘developmental rents’. This element of reciprocity looms large also in the work of many post-colonial scholars, who infuse it with similar expectations—not just of industry but of citizens in shifting and evolving social contexts (see Ekeh 1975). Moreover, this tradition emphasizes the role of rents in resolving inter-ethnic or national contests arising out of historic realities of segregation and institutionalized racism, including in apartheid South Africa, although not unique to the South African context: Chin and Jomo (2003) make reference to Malaysian financial policy under the ‘New Economic Policy’ as an instrument of inter-ethnic economic redistribution.

The suggestion is that in transitional societies, rents are not only within the ambit of the political but also, in ethnically driven ways, traverse the social, political, and economic spheres of life, influenced by the balance of social, political, and material power in the society. What the neoclassical, evolutionary, and heterodox schools of economic theory all agree on, however,



notwithstanding significant differences, is that economic rents arise out of conjunctural, structural, and market features of society. They arise from the use of power to influence key distributional and market outcomes in favour of particular groups, in relation to other groups. They determine *who gets what, why, and under what conditions*.

In the case of South Africa, the ‘political economy of distributive conflicts’ and the institutional evolution of B-BBEE, alongside the market structure of the post-apartheid economy, complicates what North et al. (2007) argue are the ‘rent-creating’ limits imposed on who accesses and who is excluded from ‘political and economic functions’ to secure peace rather than conflict. Incorporation or ‘entry’ in South Africa takes on a deep and historical significance, due to the centuries of exclusion of the African and black majority. Rather than a project of narrow ‘accumulation’, it is a socio-political project central to the historical path of the post-colonial and post-apartheid state. It is clear that there can be no meaningful and sustained peace in South Africa without the incorporation of the erstwhile excluded African and black majority in the mainstream of the economy, as the *Strategy and Tactics* of the African National Congress (ANC 1969) suggested, alongside an economic programme to change property and social relations:

We do not understand the complexities which will face a people’s government during the transformation period nor the enormity of the problems of meeting economic needs of the mass of the oppressed people. But one thing is certain—in our land this cannot be effectively tackled unless the basic wealth and the basic resources are at the disposal of the people as a whole and are not manipulated by sections or individuals be they White or Black.

This recognition—that the transformation of the society would be incomplete without meeting the basic economic needs of the people and bringing the basic wealth and resources of the country into the ownership of the people as a whole rather than specified groups within the historic racial hierarchy of South Africa—was prescient. It was a recognition, in 1969, that even a process of elite-level redistribution, would be insufficient to meet the enormity of the economic and social needs of the ‘mass of the oppressed people’.

In South Africa, as we shall see below, the real or perceived threat of violence, institutional changes, and the configuration of economic and social relations open space for a redrawing or recasting of who is within the ambit of political, social, and economic power and who has access to resources that allow for the accumulation of such power. B-BBEE, as a response to historical and contemporary experiences of economic exclusion and marginalization, has for ‘designated groups’ served as a rent distribution mechanism with its own institutions and envisaged market outcomes, which are subject to continuous recasting, reframing, and renegotiation.

## **2.2 Black economic empowerment as a rent**

The historical and contemporary role of BEE is best captured in the preamble of the Broad-Based Black Economic Empowerment Act 53 of 2003, which recognizes ‘that under Apartheid, race was used to control access to South Africa’s productive resources and access to skills’. The preamble recognizes what many scholars suggest, which is that apartheid involved ‘the extraction of rents from black people[, creating] a massive misallocation of resources’ (Acemoglu et al. 2007: 11). These rents were extracted through lower administered wages through labour monopsony practices; through the colour bar legislation; through lower spending on education and healthcare for black people; through fiscal extraction via regressive taxes aimed at raising the resources to underwrite the social wage of the white part of the population; and to provide a cheap, vulnerable, and pliant black labour force to primary industry (in mining and agriculture) initially, and later to secondary industry (Jabavu 1931).

A key implication of this was that the colonial and apartheid legislative and political environment foreclosed the ability to build an indigenous capitalist class, or alternatively, arrested its nascent emergence through legislation such as the Land Act and the Master and Servant Act, *inter alia*. Even prior to these pieces of legislation, the colonial administrations had willingly issued generous rents to English colonial elites, as a letter from Sir James Rose-Innes to Cecil John Rhodes in November 1892 shows. Lamenting the rents given to one Mr Logan which effectively gave him the ‘monopoly of supplying refreshments’ to the entire railway system and ‘practically running the whole show for about twenty years ... [with] no tenders called, though in the past tenders have always been called’, Rose-Innes lamented to Rhodes the irregular nature of this sanctioned transfer of value to the politically connected (Rose-Innes, 1892). Later, colour bar legislation and exclusive access to the Land and Agricultural Bank (‘the Land Bank’) would give white workers and white agriculture capital the rents required to prevent the violence seen in the 1922 Rand Revolt or the political crisis that confronted Smuts and Botha’s South Africa Party in the early 1900s.

Moreover, under settler colonialism and apartheid, race as an avenue for the selection of people for privilege or disadvantage was an institutionalized mechanism that distorted markets, prices, and life chances and opportunities, while creating intergenerational rents for the white part of the population. In this way, South Africa, historically is an atypical example of an economy and society built around ‘racial capitalism’, where institutionalized racism, rather than being a precondition or by-product of how capitalism takes root, is foundational to it. Racism, here, is not incidental but rather a central feature of how capitalism extracts wealth and surplus value, and assigns and apportions ‘differential value to human life and labour’ (Kelley 2022; Robinson 1983).

Therefore, B-BBEE, as something that seeks to respond to this concrete experience of institutionalized and systemic racism, is about subverting this differential value apportioned to black people, and the terms of their incorporation and participation in the South African economy, as a mechanism to build a ‘new economy’. Viewed in this way, the democratic breakthrough in 1994 was in many ways about disturbing the historic rent extraction system and replacing it with new rents aimed at redress and redistribution. B-BBEE, in this sense, is about the distribution of economic rents to the erstwhile marginalized and excluded, as a corrective or remedial measure. The preamble of the B-BBEE Act goes further, to recognize that the South African economy performs below its potential because of the persistence of the reality that ‘still excludes the vast majority of [citizens] from ownership of productive assets and [possession] of advanced skills’.

Recognizing this, BEE is about taking active steps to increase the effective participation of the majority of South Africans in the economy. Furthermore there is a recognition that the stability and prosperity of society may be undermined if such tasks are not undertaken (DTI 2003).

The B-BBEE Act (as amended in 2013) also recognizes the authority vested in the government to ‘establish a national policy on broad-based black economic empowerment [that] promotes the economic unity of the nation, protects the common market and promotes equal opportunity and equal access to government services’.

In this sense, and for the purposes of the discussion below, preferential procurement is a mechanism that arises out of this responsibility placed on the government by the Act and by Section 217 of the Constitution, which requires organs of state to implement procurement policies that provide for categories of preference in the allocation of contracts, and to protect and advance the interests of those ‘categories of persons, disadvantaged by unfair discrimination’. Further, it arises in the case of private firms, in the B-BBEE scorecard, encouraging firms to make use of a portion of their measured procurement spend on black suppliers.

### 2.3 What determines the use of formal and informal avenues to ‘empowerment’?

The choice by economic agents over whether to participate in ‘formal’ avenues towards the objective of increasing effective economic participation or to pursue these objectives through ‘informal’ channels that include violence as an agential strategy is determined by a combination of factors.

First of these factors is the state’s monopoly on violence, its capacity to manage and distribute rents, and the relative returns to informal avenues. Related to this, as we shall discuss below, is the stability or instability of the broad elite coalition, at the centre of the polity and rent distribution framework. The role of elites, in both the formal and the wider sense, is important, especially for post-colonial polities whose historic path has been built on multiple spheres of overlapping and at times contesting institutional and rent distribution networks.

The second factor is the emergence of apartheid and its antecedent, the colonial state, and its configuration of power as reliant on a constellation of ethnically defined Native Authorities in the local state which were in turn overseen and supervised by white officials (Mamdani 1996). Thus, particular elites in these authorities and in the broader nationalist front were in contest, and at times in co-operation, with the dual-power structure that underpinned apartheid and settler colonialism.

These institutional forms, rooted uneasily alongside constitutional or parliamentary forms of power in the white minority, created even within the post-apartheid era what Peter Ekeh calls the primordial and civic ‘publics’ or elements of citizenship in Africa (Ekeh 1975). Ekeh, in the case of the primordial public, suggested that notions of citizenship were linked to emergent and pre-colonial ethnic groups that gave a form of identity-driven or ‘psychic benefits of security’ to first-generation educated Africans and were in ‘need of defence’ from western modernity, while the ‘civic public’ gave primacy to economic value, in an amoral relation, creating a ‘distributional link’ between the formal and informal, the civic and primordial:

A good citizen of the primordial public gives out and asks for nothing in return; a lucky citizen of the civic public gains from the civic public but enjoys escaping [without] giving anything in return whenever he can. But such a lucky man would not be a good man were he to channel all his lucky gains to his private purse. He will only continue to be a good man if he channels part of the largesse from the civic public to the primordial public. That is the logic of the dialectics. The unwritten law of the dialectics is that it is legitimate to rob the civic public in order to strengthen the primordial public. (Ekeh 1975: 20)

The primordial may be not only the post-colonial notion of ‘emergent ethnic groups’ but also other ties of affinity, or age in the case of youth groups and location and economic activity in the case of community and business forums respectively. Here, the primordial or ‘second public realm’ can also crystallize in the form of the political party or ‘business forum’ ostensibly representing black people, women, military veterans, people with disabilities, or youth-owned Qualifying Small Enterprises (QSEs) and Emerging Micro Enterprises (EMEs), as networks constituted through family, kinship, or shared political or commercial interests. Many studies have considered how such ties have played a role in the moulding of a nationalist elite in the liberation era, whose interests are driven through the ‘vehicle’ of a political party (Lodge 2014: 6). For instance it is still unsurprising to hear supporters of the governing party refer to it not as a ‘party’ in the narrow electoral sense but as the ‘parliament of the African people’.

These categories are critical conduits to ‘claims’ to rents that arise from identity, association, or kinship. As Mamdani (1996) suggested, the colonial state, and the post-colonial state that succeeds it, spawn a ‘bifurcated apparatus’, with two distinct forms of authority: one civil, speaking a ‘language of rights’; and the other ‘customary’, speaking the ‘language of tradition’. The latter authority, by its role in the allocation of property and land in neo-feudal fashion in the former homelands or ‘Native Reserves’, or in the case of the political party the allocation of ward- to national-level opportunities, remains a major power broker in any community-level or national-level distribution of value.

Such power is only exercised under specific conditions or presupposes that there is something to distribute to all who wield enough power to ‘keep the peace’, yet in the case of post-colonial political economies, the failure to undertake meaningful structural change and economic development, and the development of a ‘home market’ in a meaningful sense, opens the economy to volatility emerging from downturns in the international economy (Fanon 1961). In the contemporary case of South Africa, such downturns are an outcome of the failure to transition the country away from being a mineral dependent economy, with unevenly located economic activity and widespread under-development.

In such post-colonial moments of volatility (of upswings, downturns, and crises) as Fanon suggests, the ‘vultures are too numerous and too voracious, in proportion to the lean spoils of national wealth’. Not all of these spoils, it seems, can be redistributed via formal channels, and ‘pacting and coalition-building’ beyond the parameters of formal channels substitutes, or where required complements, these channels. Further, as both Fanon and Khan (2000) observe, in post-colonial societies, without an indigenous economic elite, a process of primitive accumulation takes place as incipient elites plunder state institutions and private corporations, especially where these are held by minorities, in a rapacious struggle for wealth.

This was seen with the project of ejecting a merchant class of Indian descent in post-colonial Uganda. Yet some analyses also suggest that the limitation of a rent-focused analysis is that it may overlook, in the absence of a dominant indigenous economic elite, the absence of a local African business class in policy-making, or conversely, the failure of such a class (due primarily to its absence) to ‘capture’ state policies (Mkandawire 2001: 300). For instance, the reframing of the formal basis of BEE in South Africa, rather than being driven by the interests of the organized lobbies of black business, is driven by defensive litigation by business forums representing Afrikaner commercial interests, who contest the rents proposed in the *2017 Regulations*, as mentioned earlier.

Such a view, however, while correctly critical of public choice or rent-seeking explanations of African underdevelopment, overlooks the informal and primordial forms of capture of state policy that have emerged in many post-colonial experiences. While not hegemonic, one cannot ignore in post-colonial Africa the emergence from the ranks of the commercial and cultural elite, of ideas of ‘indigenization’, ‘Africanisation’, and other politics of economic reform, aimed at facilitating participation and value capture among nascent elites among the previously colonized and disadvantaged. These politics marshal both formal and informal strategies of engagement. In the South African case, primordial politics have taken on an ethno-national but increasingly factional (linked to the factions of the governing, African National Congress) reasons for existence, wherein ‘violence is an important resource’ in contests for power and access to opportunity. Viewed in this way, corruption and its corollary, ‘anti-corruption’, are both a form of politics (Van Holdt 2019: 3). This is not surprising, as Khan (2010: 1), observes, in ‘developing countries’ like South Africa, where formal institutions are often incapable of ‘distributing benefits’ in a manner consistent with the distribution of power across the society:

The distribution of power in developing countries draws significantly on organizational abilities based in non-capitalist sectors. In many cases, the historical roots of these capabilities go back to colonial history or earlier. Here, formal institutions alone cannot support distributions of benefits consistent with these distributions of power. Informal institutions like patron client allocative rules, and informal adaptations to the ways in which particular formal institutions work play a critical role

Seen in this way, the alternative or informal political economic system (at national, provincial, and local levels) rationalizes the use of violence in the face of the incontrovertible fact of limited entry into the mainstream economy.

This is, however, complicated by the fact that the construction sector—the focus of much of our discussion below—has relatively lower concentration and dominant market actors. However, in the civil work subsector (which has more contract awards than other subsectors), the top five firms hold a combined market share of 76.6 per cent, compared with 68.8 per cent in the building category (Competition Commission 2021). Prior to much of the industry restructuring after the 2010 World Cup collusion scandal, many of these top firms were largely white owned, and while many of the listed players have exited or are faced with financial distress, there are new claims on project-level cash flows which arise from perceptions of exclusivity and preferential procurement policy.

Below, I consider how the political economy of empowerment in the post-apartheid period in the formal sense is framed, with a focus on the implications of this for the construction sector and the infrastructure-led recovery at the centre of the economic policy of the South African government. Thereafter, we consider the Delangokubona phenomenon as an example of the informal primordial adaptation of BEE in pursuit of primitive accumulation, and its implications for development.

### 3 Formal avenues to economic rents within the B-BBEE framework

In order to better understand the distributive conflict or tensions around rents, it may be worth understanding what kind of distributional avenues formal BEE can unlock. A helpful framing allows us to consider these through the prism of production and exchange. I argue that two sets of ‘civic’ rents emerge in the formal sense, which are of interest – **production** and **financial or exchange-related** rents.

The first would be those rents that arise from race-based policies of redress like affirmative and employment equity, premised on special measures in the sphere of production via employment, business set-asides, preferential procurement, subsidies, and financing, *inter alia*, and focused on production-related relationships and concerns.

The second in the sphere of exchange are financial concerns around distribution (at what level dividends are paid as a proportion of earnings, and at what value shares can be exchanged for or at what capital gain, and on what terms the stake has been acquired). While the two concerns may occur in some cases in tandem, they are not synonymous and represent different claims on firm-level cash flows, as a Richards Bay-based trade unionist suggested to me:

There are people who benefit via employment, others via business opportunities, now the company appointed is owned by whites, now we want a stake in the

project ... the collaboration now between councillors to ensure employment will also collaborate with small business that wants a stake ... through that stake, a business owner will be able to employ people in the community.

I have argued elsewhere (see Cawe 2020) that the financialization of B-BBEE meant that many broad-based participants were faced with volatility of financial variables beyond their control due to the sophisticated financial engineering, or what one commentator called, 'a European call option of a special kind', giving workers, community groupings, and others 'the right, but not the obligation', to buy the stock of the target firm at some future date, if the gamble on dividend flows and interest rates pays off (Nobaza 2014). Informed by this experience, the calls have become louder for observable participation and involvement in the creation and generation of cash flows in projects and firms, rather than access to cash flows arising solely from marginal ownership (dividends, share buybacks etc.) but 'hands-off' involvement.

### **3.1 Preferential procurement and the demand for 30 per cent**

Preferential procurement, as we have shown above, is a critical element of not only B-BBEE but also other pieces of legislation aimed at redress in South Africa. Government policy suggests that public procurement can also drive transformation through the empowerment of these designated groups and small businesses through 'subcontracting and pre-qualification' for preferential procurement (National Treasury 2017).

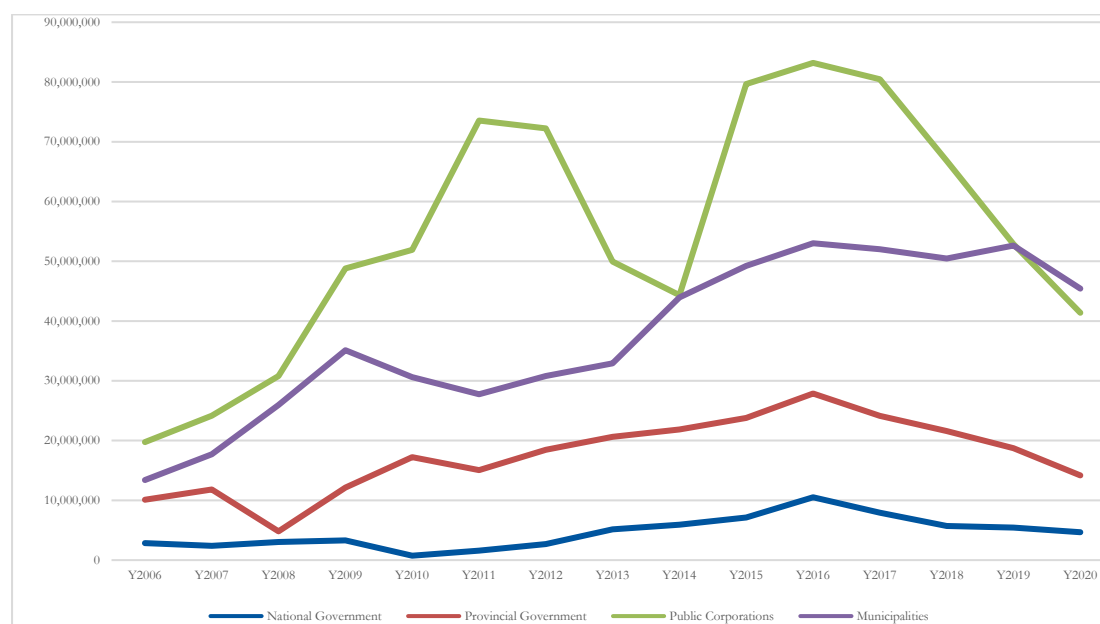
While a requirement for procurement in the public sector, many informal groups have extended such an interpretation to the procurement obligations placed on contractors working on behalf of the state, and those receiving licences or other rents from the state. While the concern raised by the National Treasury focused on provincial, municipal, and, in the case of SANRAL, state-owned entity projects, it seems that the approach of reinterpreting the preferential procurement regulations has been extended to private actors: to contractors or subcontractors who have successfully bid for participation in projects via formal means. While the South African financial media has dismissively seen these acts as inexplicable instances of criminality, these analyses have skirted around the political economy drivers of this type of political and economic choice, which complicate the seemingly neat distinctions often drawn.

The leading article in the 26 August edition of the *Financial Mail* (Steyn 2001), however, did recognize such complexity, suggesting that the genesis of this politico-economic violence is the obligations or procurement rules placed on firms to 'develop host communities through enterprise development'. As one official interviewed at a large mining company suggested, 'every business decision that needs the consent of a community is subject to factional fights over authority over the distribution of economic rents'. Yet what became clear in discussion with a trade union official based in KwaZulu Natal is that a key issue communities raise (which at times is used to justify violent disruption of infrastructure and other projects) is the failure of these firms to comply with formal pieces of legislation.

However, the remedy, is often far less formal – '30 per cent in cash upfront' or face violent disruption of commercial activities, rather than a demand in some cases for formal participation in processes that would ensure subcontracting relationships. Or alternatively, 'pay protection fees'. Although there have been numerous reports where business forums have arrived with lists of service providers for use on site, cash rather than project participation remains a critical part of the bargain in many cases. A press release by the National Treasury in 2018 lamented 'that some people are now demanding that they instead be paid in cash 30% of the value of each contract awarded in these provinces and municipalities; if their demands are not met, they threaten contractors, interrupt or stop the implementation of projects' (National Treasury 2018).

This, which I describe below as the Delangokubona phenomenon, is important to consider if one reflects on the critical role of infrastructure investment as the ‘flywheel’ of South Africa’s post-COVID-19 Economic Reconstruction and Recovery Plan (ERRP).<sup>5</sup> Furthermore, one must also consider how important the misalignment between policy-making institutions (at provincial and national government levels), which in many cases make but do not enforce policy, becomes when we consider outcomes, and how that policy is interpreted and administered at a project and firm level in municipal and state-owned entities—which, as shown in Figure 1, are the main spenders on capital investment in infrastructure.

Figure 1: Capital spending on new construction works by national and provincial government, municipalities, and public corporations (state-owned enterprises/SOEs), 2006–20 (in ZAR '000)



Source: author's own illustration based on Statistics South Africa (2006–20).

These entities, municipalities, and SOEs are also the site of the violent and disruptive threats indicative of a rent management framework in crisis. As we shall see below, these conflicts over who has decision-making authority over the distribution of economic rents enabled by law, regulation, and policy are framed by not only ethno-national markers of race and class but also the politics of political party, locality, and traditional institution in a bifurcated post-colonial society; elite interests; and the broader distribution of power in society.

#### 4 Delangokubona: An example of violence as ‘political entrepreneurship’?

In line with our earlier characterization of ‘concerns’ at a financial and operational level, the Delangokubona phenomenon, or what some in the South African media have characterized as the construction, mining, or procurement ‘mafia’ is primarily focused on operational rather than financial distributional concerns.

The modus operandi of these groups, many of whom refer to themselves as local business or community forums, is to enter sites (mostly in the construction and mining sectors) and demand

<sup>5</sup> The ERRP suggests that the ‘end goal’ of its focus and approach is to ‘pursue an infrastructure led economic reconstruction and recovery’, with investment in infrastructure that will stimulate the various sectors of the economy (Government of South Africa 2020: 4).

a stake (normally 30 per cent of contract value), a subcontracting arrangement, and, in some cases, that firms employ certain people linked to them (Irish-Qhobosheane 2021). A further element of this phenomenon is to not only to establish the legitimacy of these groups as avenues to access economic opportunities in limited supply in the eyes of many black-owned SMEs looking for opportunities, but also to lend credibility to alternative and parallel interpretations of redistributory policy in the areas of procurement and employment equity.

In the construction sector, the business forums engaged in the Delangokubona approach, had by 2019 disrupted over 180 infrastructure projects in this fashion. As an April 2018 *Business Day* article suggested, many such projects had been halted in the province of KwaZulu Natal:

These include a R1.8bn revamp of Tsogo Sun's Suncoast Casino complex, the R120m Durban City Fleet building site, which was nearly torched and the R132m inner-city hotel construction ... on Wednesday morning, dozens of Delangokubona supporters halted construction at the Oceans Umhlanga site, [which] is a R4.2bn project spearheaded by Durban businessperson Vivian Reddy. (Makhaye and Mkhize 2018)

The operations have also been extended to the funeral industry, where in 2018, organized groups calling themselves the Delangokubona Business Forum and the Forum for Radical Economic Transformation sought to exclude white- and Indian-owned funeral parlours from operating in the townships and rural areas of KwaZulu Natal. A further consideration worth discussing relates to these forums and their activities, which span the formal and informal forms of pressure placed on firms to provide access to protection fees in cash, contracts, and employment opportunities

Further, it seems there are four features of the Delangokubona phenomenon that were enabled or only made possible by the particular conditions that emerged in the post-Apartheid political economy, drawing from the literature discussed in preceding sections.

These include challenges in policy design that including limiting the ambit of rent distribution; declining output and investment across the economy; the geographic locus of capital spending and economic activity (and by extension the capabilities required to access rents); the efficacy of the monopoly enjoyed by the state on violence; and the uneven enforcement of firm- and project-level commitments to B-BBEE via preferential procurement and employment equity.

I discuss these in turn.

#### **4.1 Who benefits from the formal 30 per cent? Misalignment of signal and intent, with practice**

As discussed above, a critical focus of the Delangokubona approach has been on construction works, which in many instances exhibit lower barriers to entry for participation from an employment perspective but may present some challenges from an enterprise and supplier development perspective.<sup>6</sup> As far as employment is concerned, construction is known to disproportionately (relative to other economic sectors) employ those with limited or no skills (National Treasury 2016). This makes it an attractive area for value distribution to historically disadvantaged groups and communities, through employment and subcontracting or enterprise/supplier development channels.

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<sup>6</sup> Construction Industry Development Board (CIDB) registration at Grade 1, the entry-level grade, costs ZAR450 (US\$30), with relatively lower barriers to accessing subcontracting opportunities with larger contractors.



On enterprise development opportunities, the situation becomes a little more complicated. Schedule 9 of the 2017 Preferential Procurement Regulations implicitly creates a tripartite relationship between the procuring entity, the main contractor, and the subcontractor. This procurement network also effectively creates a relationship between the subcontractor and the procuring entity. The 2017 Regulations, which cover projects valued above ZAR30 million, imply that every project valued in this way must at a minimum have ZAR9 million in activities and services subcontracted to designated groups (Anthony 2019: 122), unless the subcontract is ‘chopped up’ among a few EMEs, presenting monitoring and other quality assurance challenges for the main contractor. Seen in this fashion, and considering the requirement that CIDB contractors be graded at certain levels in order to undertake work of a particular value, this means only a contractor at Level 6 and above, can be a subcontractor on projects above ZAR30 million.

This suggests that while the regulations’ aim of creating subcontracting agreements within procurement networks may be well intentioned, if these regulations are applied in a stringent and formal sense, only medium-capacity contractors and above can benefit, rather than black-owned small, micro, and qualifying enterprises (or EMEs with a turnover of below ZAR5 million) as often suggested. As can be seen in Figure 2, when we consider Level 1<sup>7</sup> contractors across different key metropolitan municipalities (‘metros’), one realises that while the ZAR30 million threshold may serve as a mechanism to encourage the emergence of larger or medium-sized black-owned construction firms, it fails to recognize that many of the historically disadvantaged contractors still operate between CIDB Grades 3 and 6, and that the 2017 preferential procurement regulation may not serve as an accessible rent for many CIDB-registered firms at lower grades.

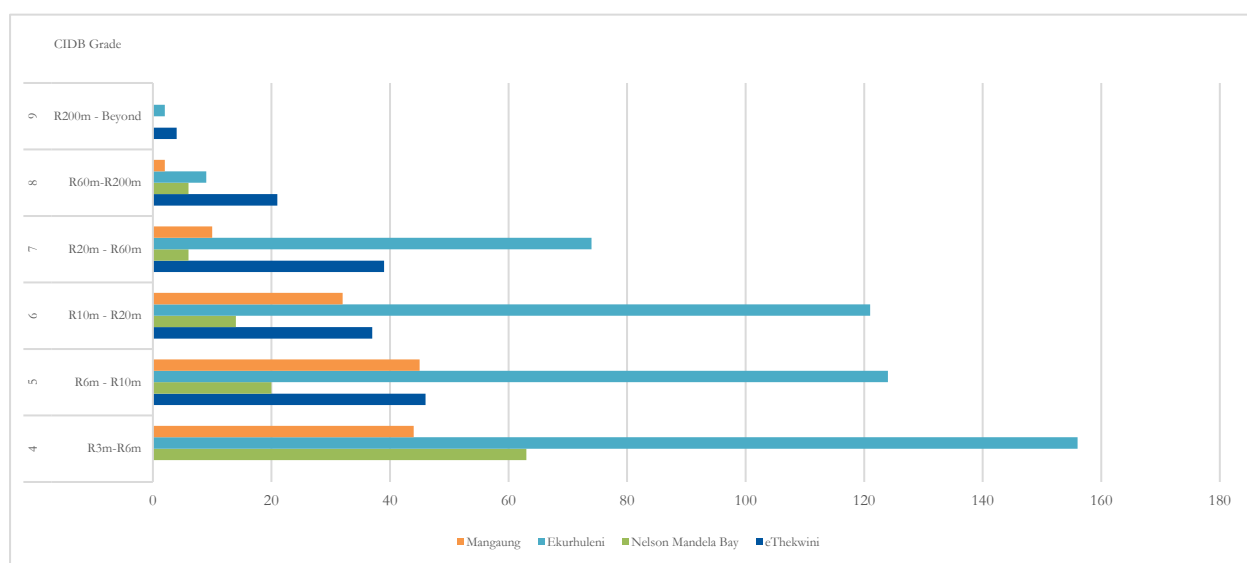
The concern here, then, insofar as the 2017 Regulations are concerned, is not only that they narrow the selection pool of capable and cost-effective bids, as Afriforum suggests in its court bid, but rather that the regulations strictly define in an even narrower fashion the type of black firm that can benefit from the policy rent in Schedule 9 in a formal sense.

Figure 2 outlines this in the case of contractors in the metros of Mangaung, Ekurhuleni, Nelson Mandela Bay, and eThekweni, showing the limited number of contractors in Grades 6–9 (those who can qualify) in some of these metros.

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<sup>7</sup> A Level 1 B-BBEE is a synonymous with 100% ownership as measured by the BEE scorecard, across exempted micro-enterprises (turnover < ZAR10 million), qualifying small enterprises (with turnover between ZAR10 million and ZAR50 million), and generic enterprises (turnover > ZAR50 million). Generic and qualifying small enterprises attained a score of 100 points out of 118 for generic entities and out of 103 for qualifying small enterprises.

Figure 2: Number of Level 1 black-owned contractors by metro, CIDB Grades 4–9, across all categories of construction works, 2022



Source: author's own illustration based on data in CIDB Contractor Register, 2022.

The picture provided by Figure 2 implies that the formal design and interpretation of the regulations as a mechanism to give effect to preferential procurement among historically disadvantaged groups may inadvertently (or by design) only target specific black contractors—those who have a considerable portfolio of work and experience, rather than those seeking entry into the sector, who are often implied to be the target group.

Further, as the figure illustrates, most contractors (across grades) are still located in the urban core (around Gauteng), with a relatively lower base of Level 1 CIDB-registered black-owned construction firms at the relevant grades in places like Mangaung and Nelson Mandela Bay. This suggests that there is considerable purchase in remarks often made by community groups about the need to have local subcontractors from communities in close proximity to infrastructure projects, not only to create an observable signal of local benefit but also to overcome the spatial concentration of construction and built environment capability in metropolitan municipal areas. Without such intervention, there may be a ‘chicken and egg’ scenario, where small black contractors fail to get subcontracts on work of a significant scale because they do not have the grade, and they cannot get the grade because they have not received subcontracts of a significant enough size to qualify.

A further complication is that the regulations also require such contracts to be subcontracted where it is *feasible* to do so, but they neither define feasibility nor offer a framework for its definition. The discretion to do so, it seems, may rest within the preferential procurement policy frameworks across the ‘tens of thousands of sites where [public] tenders are issued and awarded’ (PARI 2014), rather than in any central directive coming from national government. Further, the Constitutional Court’s order, ‘that each organ of state is empowered to determine its own preferential procurement policy’, may confront this challenge or may introduce a ‘smorgasbord’ of regulations that create arbitrage opportunities or complicate formal avenues for market entry for smaller players.

## 4.2 Are the ‘spoils of national wealth’ becoming leaner? Declining capital investment spending

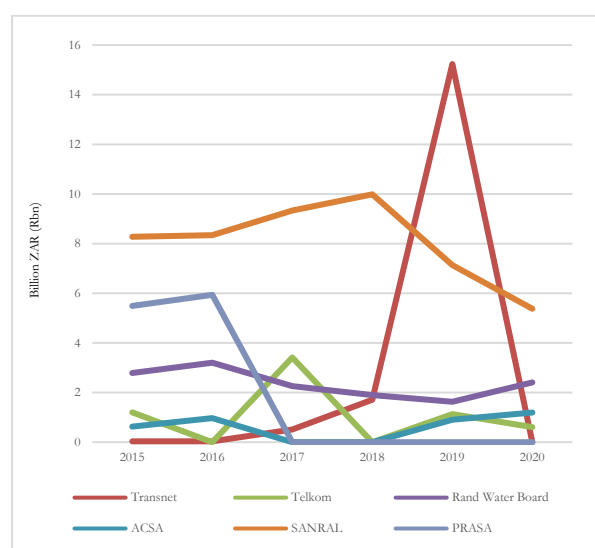
Having considered the design implications of the formal regulation on access and overcoming barriers of entry for historically disadvantaged contractors, I argue that capital investment in construction works, the arena where much of the Delangokubona phenomenon has been observed, has been subject to ebbs and flows that have disrupted the ‘class formation’ project of black entrepreneurs in the construction and built environment sector.

This, rather than explaining the ‘30 per cent or cash’ phenomenon, explains the chosen tactics of entry for many small contractors faced with real or perceived reversals in project entry, participation, and access. The analysis below focuses primarily on capital investment in construction works in the public sector (undertaken primarily by SOEs and municipalities), which is defined as ‘spending not connected to existing assets and infrastructure, consisting of spending on works under construction and fees payable to architects, engineers and other professional firms’ (Statistics South Africa 2006–20: 2020).

As discussed above, the bulk of new construction works in the public sector occurs in municipalities and SOEs, which are both covered by the Preferential Procurement Policy Framework Act. As can be seen in Figure 3 and Figure 4, where I consider SOEs (excluding Eskom’s build process, as a major ‘outlier’) and metros, there has been a steady decline in capital spending across both institutional categories in the last few years. This suggests that the quanta of rents available to different economic actors with a capacity for disruption or violence has been declining, and so too has the ambit for subcontracting opportunities to the value of  $\leq$  ZAR9 million or so.

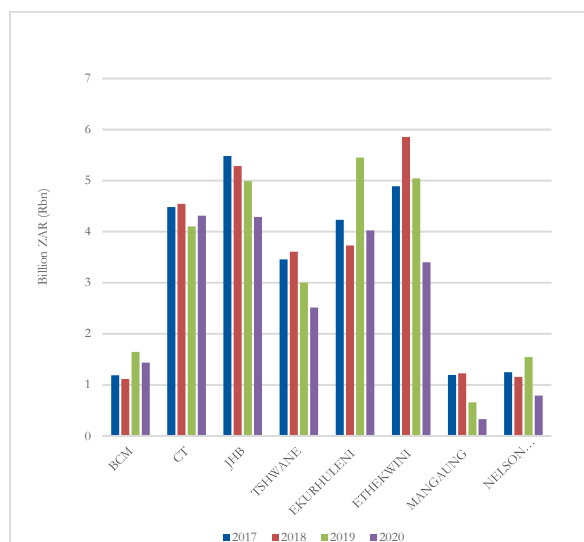
The implication of this is that the specific construction works budgets, while declining, have also created tense inter- and intra-class conflicts across construction SMEs, which in some cases have been resolved by a politics focused on expanding the opportunity set for smaller black players, and the consideration of violence where such opportunities for entry have been hard to come by.

Figure 3: Capital spending on new construction works by South African SOEs (excluding Eskom), 2015–20 (in billion ZAR)



Source: author’s own illustration based on Statistics South Africa (2015–20).

Figure 4: Capital spending on new construction works, metros, 2017–20 (in billion ZAR)



Source: author's own illustration based on Statistics South Africa (2006–20).

The Delangokubona approach, as far as the built environment is concerned, has not only been confined to greenfield projects but has also taken an active role in targeting existing infrastructure for acquisition and enforcing by-laws or the collection of rentals in some instances. Deep urban decline in eThekweni, for instance, gave rise to a campaign in 2017–18 in which the Delangokubona Business Forum sought to negotiate for the acquisition of municipal buildings for reconversion into student accommodation or office space for black-owned businesses (Pillay 2019). The implication of this is that declining capital spending and recent legal outcomes which may narrow the scope of what subcontracting is *feasible* by giving each procuring entity discretion over preferential procurement roles may create multiple political economy contests, as rules may differ across comparable projects in different jurisdictions.

### 4.3 Formal mechanisms of redistribution and redress are in a systemic crisis

Conversely, what this also suggests is that the projects planned and scoped under the auspices of the ERRP and the National Infrastructure Plan 2050 released by Cabinet in March 2022 may also lay the basis for more fractious and intense conflicts. This is why the National Infrastructure Plan 2050 suggests, alongside recognizing the ‘extortion of firms and workers’, that a precondition of the successful execution of critical infrastructure investment over time is active and explicit support for ‘emerging construction and supplier businesses and the empowerment of historically disadvantaged entrepreneurs’:

Action will be taken to ensure that the Preferential Procurement Policy Framework enables access to opportunity for historically disadvantaged business and black industrialists and that misuse of these provisions is stopped. (DPWI 2022: 74)

It does seem that much of this commitment is qualified with the proviso that those who misuse these enabling provisions be stopped (DPWI 2022: 74). While procuring entities are effectively dismissing the tactics used by such groups, their ability, at multiple levels of and across the state, to design their own systems of preference (as a recent Constitutional Court judgment<sup>8</sup> suggests) may create multiple frameworks, with their own percentages or mechanisms of preference, that

<sup>8</sup> Minister of Finance *v.* Afribusiness NPC [2022] ZACC 4.

may make uncertainty over these a key driver of local conflicts. The legal disputes around the ability of the national government to prescribe a preferential procurement regulatory framework for procuring entities, also occurs alongside contradictory responses to the Delangokubona phenomenon.

Take the examples of eThekweni Municipality and the Umgeni Water Board. In 2016 the eThekweni Municipality obtained an interdict against the Delangokubona Business Forum, for threatening and assaulting municipal workers and independent contractors in the city's electricity, roads, and stormwater projects. While at Umgeni Water in the same year, the water board signed a memorandum of agreement with the Black Business Federation (formerly the Federation for Radical Economic Transformation), as a means to 'proactively manage future differences with the business sector' (Hlophe 2021). By 2017, according to the state's case in a 324-page indictment in the corruption case of former eThekweni mayor, Zandile Gumede, and 21 other accused, the Delangokubona Business Forum had forged a closed bond with Gumede and was summarily appointed (or had some of their associates appointed) as subcontractors in the Durban Solid Waste contract. While these allegations are yet to be aired in a trial, it is clear from a 2018 *Sowetan* report that the business forum forced the closure of the N2 roadway in July 2018, due to a payment dispute with the main contractor. While not ostensibly linked to the ongoing trial, this suggests that the Forum and its members were by this stage involved in waste-management-related procurement processes within the City of eThekweni, notwithstanding the 2016 interdict.

Later, by 2021, the KwaZulu Natal Department of Economic Development was also considering a broad-based social compact with Delangokubona and similar groups, as a mechanism of pre-empting disruption rather than a sustained basis for trade-offs and a mutually beneficial framework of engagement. The business forums have also benefitted from rebranding as groups not just agitating for 'entry', but also as those in defense of law and order, and at times pre-empting the activities of other disruptive business forums. This falls in line with the 'rebranding and self-representation' and disavowals of violence that co-exist uneasily alongside the mobilization of the potential for violence where the need arises (Obadare 2013). This is only possible because of how lucrative the rents mobilized by that violence can be—as Malusi Zondi of the Federation for Radical Economic Transformation (FFRET), suggested, as great as ZAR50 million a month from project participation in 2018 (Erasmus 2021):

Just think about Umgeni [Water]. It administers more than R40-billion of projects. When you go to Dube Trade Port, which falls under economic development, we have MoUs with Dube Trade Port, with Richards Bay Industrial Development Zone, Sanral—look at the construction on the N3—30% of R4.5-billion. There is a lot of good work that we are doing. So lots of projects are coming to us.

The rebranding of groups associated with the Delangokubona phenomenon, while able to regularize such lobbying for project participation and entry by small black-owned contractors, presents a significant complication to a security-focused and law-enforcement-driven approach to the activities of many of these business forums. This is concerning, as it suggests that, much like the question of who is vested with authority to define preferential procurement frameworks, the engagement approach with business forums and similar groupings depends on which procuring entity you are engaged with, rather than on a well-defined and -understood political framework or political settlement.

This may make compacting difficult and lead to different and varied outcomes, for the same independent main contractor, for instance, working across overlapping or two different procuring entities ostensibly within the same district, province, and government. This ambivalent approach, while responding to the distribution of power and potential and capacity for violent disruption at

a local level, may create a dangerous precedent and signals that such disruption is increasingly a viable mechanism of entry, encouraging further disruption, at great social and economic cost.

#### 4.4 The ‘marketplace for violence’

As shown above, those with the potential and capacity for violent disruption of capital projects or new construction works, if they employ the Delangokubona approach, do so because of the relatively low risk of consequence, prosecution, and detention. While this view may hold, it may also overlook the contradictory ends to which this violence is deployed. Some violence is fundamentally disruptive, while some is seen as ‘complementary’ to efforts by law and order to maintain the peace. It is this which may give a growing veneer of credibility and legal formality to the work of many of these groups. In response to a **state seemingly without an effective monopoly on violence**, these groups have marshalled their potential and capacity for violence to augment the capacity of the state to enforce not just economic-empowerment-related legislation but also municipal by-laws.

It is such violence that complements the law enforcement agenda of the state, and the willingness of the Delangokubona approach to use formal channels where conditions favour such an approach, that has also won the groups favour within the formal construction and engineering establishment. The South African Forum of Civil Engineering Contractors (SAFCEC) is an example of this. SAFCEC suggested in a letter to President Ramaphosa in 2019 that these ‘forums’ had disrupted and halted 78 projects worth a minimum of ZARR25.5 bn. Yet by 2021, the chief executive of SAFCEC was suggesting that they ‘were co-operating very well’ with the Black Business Federation (BBF, the umbrella body of the business forums, which includes the Delangokubona Business Forum as one of its members), and that ‘violent disruptions had dramatically subsided’. If one considers both the public and the seeming private acceptance of the business forums as credible stakeholders, does this suggest a co-operative or collaborative approach has been the response to the violence, in pursuit of project continuity? Or that the likes of Delangokubona benefit more at this stage from ‘peace’ as a mechanism to secure entry within the orbit of rent distribution?

I argue that in the marketplace of violence, as North et al. (2007) argue, it has been in the interests of all parties, most of all main contractors and project owners faced with cost and time over-runs, to engage the ‘formal’ face of forums and platforms like FFRET, BBF, and Delangokubona. Conversely, the dialogue approach may also signal despondency with the ability of law enforcement agencies to respond speedily in instances where violence is used, pre-empting such violence through a compact rather than hoping for a resolution to such violence through state intervention, which has seemingly not been forthcoming. It seems that many public and private actors who had initially explored legal and policy channels to solicit a formal response from the authorities to the Delangokubona approach have later revealed a preference for co-operation with the Forum.

#### 4.5 Disunity in the elite coalition (within the governing alliance) and other elements of the South African ‘superstructure’

One of the key features of how the Delangokubona approach operates is that it is able to embed its organizing approach and ‘ideological’ basis not just in business forums, but in many other organizational forms. These include ad hoc community structures that emerge, and the co-optation of small business groupings. It also extends to political organizations, marshalling organizational capabilities that rest, in many instances, within the governing tripartite alliance. Many of the campaigns led by organizations who use the Delangokubona approach have also included the veterans grouping of the former armed wing of the African National Congress, uMkhonto

weSizwe. At an ideological level, the politics of entry marshalled by the Delangokubona approach coalesces with increasing calls for radical transformation of the South African economy and, by extension, the policy and ideological fault-lines that characterize the factions in the governing African National Congress

As Nathi Mnyandu suggested in a speech March 2018, ‘we are biased towards the ANC, we are members of the organization ... we are now talking about radical economic transformation’. This suggests that many of the interests that coalesce around business forums also use organizational capabilities within and beyond the governing ANC to extend and consolidate their local power bases. If we consider ‘the Alliance’ as the governing elite coalition as per North et al.’s (2007) formulation, then the organizational challenges of instability, factionalism, and other contests interface with groups interested in the state as an avenue to accumulation and mobility.

As a trade unionist who is a member of a COSATU-affiliated trade union suggested in an interview,<sup>9</sup> the ‘crisis of leadership’ across Alliance structures has given rise to unhealthy political and leadership contests that make use of violent disruption with and alongside groups using the Delangokubona approach as a means to consolidate power and access to patronage opportunities via contracts, tenders, and other rents. This instability is found not only within the ANC-SACP-COSATU-SANCO Alliance,<sup>10</sup> but also in what Marxists would broadly call the South African ‘superstructure’.

The superstructure involves the entire institutional and ideological scaffolding of society as found in the law, media, politics, science, education, religion, culture, and tradition, *inter alia*. The calls for radical economic transformation as formulated in the 54th National Conference of the ANC, and the resolutions of that conference, challenged the ANC to ‘offer a radical alternative to the existing social and economic order’ (ANC 2017: 24). Yet the interpretation of this radical approach is often contradictory in practice.

While ideologically ‘progressive’, these ideas co-exist uneasily with ideas that naturally arise from the primordial institutional and organizational bases that give an avenue to accessing rents in the civic public. Take for instance the position of largely KwaZulu-Natal-based business forums, and the BBF, on the Ingonyama Trust, the role of traditional authority, and the ‘material’ basis of traditional authority. While those who deploy the Delangokubona approach may agree with the ANC’s resolution to use ‘state procurement as an empowerment lever’ and the ‘strengthening of set-asides’ to promote black-owned business, they may not be supportive of the ANC’s suggestion in the same set of resolutions of ‘democratizing control and administration of areas under communal land tenure’, or empowering local governments (rather than traditional authorities) to advance land reform.

Further testimony of this role that these groups have played can be seen under the banner of the ‘RET Defenders’, who have vowed to defend the authority of the Ingonyama Trust from the repeal or amendment of the Ingonyama Trust Act, as proposed by the high-level panel on land reform chaired by former president Kgalema Motlanthe. The high-level panel recommended the repeal of the Act, in line with national land policy, and the securing of land tenure for communities and residents in areas in the former KwaZulu Bantustan.

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<sup>9</sup> Interview with Richards Bay-based NUM shop steward, 11 February 2022.

<sup>10</sup> SACP: South African Communist Party; COSATU: Congress of South African Trade Unions; SANCO: South African National Civic Organization.

So while the Delangokubona approach is often deployed to claim economic rents in the civil realm, it is clear that primordial psychic identities are often, for political and other reasons, mobilized outside the realm of policy and party resolutions. This contradictory role of Delangokubona-type groupings creates scope for alternative and radical interpretation of state policy in the interest of black-owned business, while alongside that ‘defending the land of Amakhosi [traditional chiefs], from land expropriation without compensation’ (Wicks 2018). Furthermore, there is an unashamed call for the decentralization of preferential procurement, as can be seen in the recent comments by the BBF on the 2022 Preferential Procurement Regulations issued by the National Treasury in March 2022. As a BBF adviser suggested to me, the group’s interpretation of the AfriForum judgment is that it gives ‘organs of state an opportunity to be able to do what is called “sector-specific” and customised’ preferential procurement frameworks. Such a customized approach, according to the BBF, will also make provision for ‘localised’ forms of preference, to prioritize suppliers and contractors within a particular geographic area (Masombuka 2022). This latter concern reflects growing impatience with a production and value distribution structure still largely located in urban areas.

Unsurprisingly, interpretations in the post-apartheid era of redistribution and redress interventions, such as the Delangokubona phenomenon, reflect the despondency with the project that collapses the resolution of the ‘national question’ with the creation of a patriotic commercial elite from the ranks of the oppressed. This can be seen in the criticism by the likes of Malusi Zondi of the FFRET of ‘atypical BEE’, suggesting that many of those who have benefited ‘have closed doors for other people’. This suggests that BEE is seen by many of these groups as a mechanism for entry but also, in its earlier variant, a mechanism for class formation, which has in effect ‘closed the doors’ for meaningful economic change. The implicit trickle-down assumption of earlier BEE deals, and the scores excluded from participation during its early phases, have come to collect on the unfulfilled promises, and in many ways these frustrations have found expression in informal politico-economic networks of accumulation that are in constant flux and are far from hegemonic, but are contested in different spaces, be that in state-owned entities or municipalities.

## **5 Concluding remarks**

Apartheid and settler colonialism, and their enduring presence from the eighteenth century onwards, were built on a rent distribution framework centred around ‘racial capitalism’ and the use of rents extracted from African people, and black people in general, to underwrite the white social wage. The history of racial capitalism, race-based exclusion from economic activity, and an enduring political economy based on the concentration of capital, product, and service markets has given rise to a post-apartheid ‘politics of entry’ that mobilizes both formal and informal adaptations of policy to ensure access and participation by small and medium-sized enterprises owned by historically disadvantaged people.

This politics unfolds, as the discussion has illustrated, in a shifting political economy context, where capital spending on infrastructure is expected to play a counter-cyclical role, and a role in the transformation of who benefits from public procurement, in favour of historically disadvantaged people. The discussion has shown that balancing these two objectives, from an institutional perspective, is neither neat nor easy, but is subject to political economy contests where informal adaptations of policy and at times violence are marshalled in distributive conflicts that are set to shape the tasks of reconstruction that confront the South African state at multiple levels.

Confronted by these informal adaptations and legislative and other challenges to the ‘formal’ BEE framework and weakened ability to enforce laws that prevent disruption, the South African rent



distribution framework will need to contend with the civic and primordial issues it faces, all the while ensuring that infrastructure projects catalyse the structural change required to place the South African economy on a trajectory that responds to the triple challenges of unemployment, poverty, and inequality.

For this to happen, the renegotiation and reframing of the orbit of rent distribution will require contending with those with a potential and capacity for violence, within and outside the state and elite coalition. One wonders whether the specialized units ‘for the construction mafia’ that President Cyril Ramaphosa spoke of in Parliament in March 2022 will resolve the disruption and violence, which arises not just from criminality but is driven by political economy influences that require a combination of political, social, and institutional solutions. Without this, the counter-cyclical ambitions of South African economic policy, and its infrastructure programme in particular, will be stunted by historic and subjective weaknesses that arise from weak policy design and execution, which also make violence an increasingly attractive avenue to the well intentioned, the opportunistic, and even the criminal—all those seeking to access the orbit of the state in pursuit of accumulation and upward social mobility.

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