

## How Should Businesses Respond to the Affirmative Action Laws In Emerging Market Economies? A Theoretical Framework Applied to Nigeria and South Africa.

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### Abstract

*This paper reviews the affirmative action laws of Nigeria and South Africa and asks what the best way for businesses to respond to them is. The answer is that businesses have no choice but to obey the law, but by linking the changes required by the laws to common archetypes of change they can find optimal responses that both maximize shareholder value and boost organizational capabilities. We are also able to propose certain responses to the resistance that might arise to changes required by affirmative action laws.*

*Key Words: Affirmative Action, Emerging Markets, Business in Africa, Business Laws, Managing Change.*

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### Introduction

Corporations seeking to do business in emerging market economies have to adapt their operations to suit environments that are completely different from what they are accustomed to. The international business literature is replete with advice on what corporations have to do to succeed as they cross borders. Concepts such as “filling institutional voids” and “meeting lower price points” are by now familiar and well understood. The literature is however, silent on specifics regarding how businesses should respond to one particular item that has become widespread in emerging market economies: that of affirmative action laws.

Affirmative action laws are laws promulgated to assist individuals (or groups) that are presumed to be disadvantaged. Contracting firms in developed countries (such as the USA) that have government departments as clients are familiar with such laws. The laws typically make it easier for companies that employ a significant number of people from minorities, or use a large number of minority owned subcontracting firms, to garner profitable contracts. In the international arena, the more well known of these laws, were enacted by Malaysia and Brazil. These countries passed laws that aimed to give their nationals specific business advantages compared to foreigners. Scholars, up to this point, have not focused on the question of how businesses should react in the face of these laws. For legal and moral theorists the question is whether affirmative action is addressing injustices of the past, or whether it is a form of modern day reverse discrimination (e.g. Campbell 1996). For economists the issues are whether it is of benefit, or whether it imposes costs on society (e.g. Marion 2009). Political theorists are sometimes more concerned about whether the laws enhance the possibility of creating stable political systems and whether they enable disparate interest or ethnic groups to resolve their differences (e.g. Mustapha 2007).

In this paper, we focus specifically on drawing prescriptions of what strategies businesses should deploy in environments where such laws are in effect. Affirmative action laws essentially require enterprises to change the way in which they operate. On this premise, we relate our analyses to the literature on implicit theories of change associated with Beer and Nohria (2000). We create a theoretical framework that enables

us to draw out strategic responses to affirmative action laws that can help build sustainable commercial organizations. Although we focus on the laws of Nigeria and South Africa, our results are generally applicable to the affirmative action laws in most emerging market economies.

The laws in Nigeria and South Africa are very different from each other. In Nigeria, the affirmative action law that impacts business is specific to the oil and gas industry. In contrast, affirmative action is economy-wide in South Africa. The reasons for this difference lie in the respective histories of each country and the respective structure of both economies. Adebajo (2010) takes a historical perspective and views both countries as having been inflicted by “the curse of Berlin” – a reference to the 1884 Conference of Berlin in which the German Chancellor, Otto van Bismarck arranged for powerful European countries to partition and ‘own’ Africa without any reference to the peoples therein, their traditional societies, or existing kingdoms. Nigeria was therefore cobbled together by the British. The British also imposed their will on what is now South Africa. The crucial difference between the two territories is that South Africa had a lot of European settlers. Tens of thousands of British settlers had migrated to South Africa in the late 19<sup>th</sup> century in pursuit of wealth to be derived from the mining of gold. Prior to this, there was already a large number of Dutch migrants (the Afrikaans) who had settled there. By the mid-20<sup>th</sup> century, the two white groups had instituted and legalized ‘apartheid’ – a blatantly racist policy that disenfranchised and systematically discriminated against the indigenous black owners of the country. Affirmative action laws in South Africa are therefore broad and aimed at correcting past injustices by empowering the previously disadvantaged black Africans. Nigeria on the other hand, never had a white settler population, and its affirmative action laws can therefore, afford to be focused towards specific target industrial sectors where opportunity for its nationals has been limited historically.

The other reason for the different nature of affirmative action laws between Nigeria and South Africa is the structure of the economies. Although they are the two largest economies in Sub-Saharan Africa, their engines of growth differ. Nigeria is an oil exporter but its’ economy is highly under-diversified. By contrast, South Africa also earns a lot from exporting but from a more diversified industrial base. Each country applies affirmative action to industrial sectors where it believes there can be clear financial rewards for its disadvantaged nationals. In essence, whilst Nigeria’s affirmative action law is targeted at its main export sector, oil, South Africa’s is more broad based because its’ source of wealth is also more diversified. The rest of the paper is organized as follows. Section 2 gives an overview of the affirmative action laws in both countries. We discuss what the statutes actually say and how the law is implemented in practice. Section 3 gives an overview of the two implicit theories of change in the change management literature. We also introduce a third implicit theory termed “Theory AA” that describes change aimed at meeting the requirements of affirmative action laws. Section 4 is the core of the paper. It draws out prescriptions of what strategies businesses should adopt in the environments where affirmative action laws are in effect. Section 5 tackles the issue of how Senior Management should respond to episodes of resistance to change from within (i.e. from employees and other managers of the corporation trying to resist change and resist attempts to meet the requirements of affirmative action laws). Section 6 provides some concluding remarks.

## **Affirmative Action Laws in Nigeria and South Africa.**

In this section we give an overview of the affirmative action laws that impact business in the two countries. We start with that of Nigeria.

### **The Nigerian Local Content Law**

The Nigerian Oil and Gas Content Development Act (hereinafter “The Act”) was signed into Law in April 2010. The stated purpose of the Act is to provide for the development of “Nigerian Content” in the Nigerian Oil and Gas industry. In essence, the law is designed to promote maximal participation of

Nigerian citizens in the oil & gas industry, as well as to increase the amount of value added (or created) in the Nigerian economy. The Law applies to “all matters” pertaining to, or connected with the Nigerian Oil and Gas industry, and requires that all “regulatory authorities, operators, contractors, subcontractors, alliance partners and other entities involved in any project, activity or transaction in the Nigerian oil and gas industry shall consider Nigerian content as an important element of their overall project development and management philosophy for project execution”.

The Act defines Nigerian Content as “the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry”. The Act also created the Nigerian Content Development and Monitoring Board (hereinafter “the Board”) and charged it with monitoring and implementing the provisions of the Nigerian Content Law. Other broad provisions of the law are as follows:

- Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses, and in all projects for which contract is to be awarded in the industry.
- There shall be exclusive consideration given to Nigerian indigenous service companies who have adequate capacity to execute projects in land and swamp areas.
- In bidding for any license, permit or interest in the industry, the operator must submit a Nigerian Content plan to the Board. The plan must be assessed and only approved if it meets the requirements of the law.
- The plan must ensure that (i) first consideration is given to goods and services manufactured in Nigeria, and (ii) Nigerians shall be given first consideration for training and employment in the work program for which the plan was submitted.
- Operators and project promoters shall give preference to bids with higher Nigerian content. Specifically, if bids are within 1% of each other, the bid with the higher Nigerian content wins if its Nigerian content is at least 5% more than that of its competitor.
- A Nigerian indigenous company shall win bids if they have not priced more than 10% higher than the lowest bidder. A Nigerian company means a company formed and registered in Nigeria with at least 51% equity shares held by Nigerians.
- Operators or project promoters can retain a maximum of 5% of management positions and shall submit to the board a succession plan for any position not held by Nigerians. The plan shall provide for Nigerians to understudy expatriates for a maximum of four years after which the position must be Nigerianized.
- All operators shall employ only Nigerians in their Junior and intermediate cadres. In addition, for any contract or project with a budgeted value above US\$100 million, there shall be a “labor clause”, mandating the use of a minimum percentage of Nigerian labor in specific cadres to be specified by the Board.
- Operators are required to submit plans to the Board, and carry out initiatives aimed at technology transfer to Nigerian entities. “Full and effective support” to technology transfer shall be given by facilitating joint ventures and partnerships between “Nigerian and foreign contractors”.
- Operators are to establish offices within the catchment area where they work. Project management and procurement decisions are to be made from that office.
- All fabrication and welding must be in Nigeria. Importation of welded material is prohibited, and the Minister of Petroleum Resources is now empowered to make regulations “which shall require any operator to invest in, or set up a facility, factory, production units or other operations within Nigeria for the purposes of carrying out any production, manufacturing or for providing a service otherwise imported into Nigeria”.

- Insurance, finance, legal and other professional services can only be carried out by Nigerian entities (except in cases when regulatory authorities accept that local capacity has been exhausted).
- The Board shall establish an e-market place that serves as a platform to facilitate the transactions required for delivery of goods and services. This platform shall be interfaced with a Joint Qualification System (JQS), the sole system for prequalification for service providers and industry contractors<sup>1</sup>.

The Act also specifies, in an attached “Schedule”, the minimum Nigerian content for various activities that take place in the oil and gas industry. The activities covered by the schedule are many and varied, but we can give some examples here. For instance, the schedule specifies that for FEED and detailed engineering on onshore facilities, 90% of the required man-hours must be in-country. For construction management and supervision, the Nigerian content requirement is 80%. The lowest required Nigerian Content is 45% for services for which it is generally believed that indigenous capacity is low. Subsea systems consultancy and quality assurance consultancy fit into this category.

These are not necessarily very stringent requirements for foreign operators in the Nigerian oil and gas industry to meet, but they essentially require a sharp change from the manner they had been operating in the past. The Nigerian Content law is clearly an affirmative action initiative with elements targeted at ownership requirements, management control, skills development, preferential procurement, local fabrication, and technology transfer. The Act makes it incumbent upon operators to maintain bidding systems that give “full and fair opportunity” to Nigerians. It also stipulates penalties for those that contravene its’ provisions. The Act states that “An operator, contractor, or subcontractor who carries out any project contrary to the provisions of this Act, commits an offense and is liable upon conviction to a fine of five percent of the project sum for each project in which the offense is committed or cancellation of the project”.

### **The South African Black Economic Empowerment Law**

The Broad-Based Black Economic Empowerment Act was passed in 2003 and became law in January 2004. The purpose of the law is to promote “economic transformation in order to enable meaningful participation of black people in the economy”. Meaningful participation is to be accomplished by a “substantial change” in the racial composition of the ownership, managerial control, and skills base of enterprises. The term “black people” is used to refer to “Africans, Coloreds and Indians”, but the law has a wide ambit applying to all previously-disadvantaged South Africans. For instance, the statute defines Broad-Based Black Economic Empowerment as “... the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies..”.

The law asserts that the Minister of Trade and Industry may “by notice in Gazette issue codes of good practice” in furtherance of the objectives of black economic empowerment. In addition, every public entity or organ of state must apply any such code of good practice in:

- determining qualification criteria for the issuing of licenses, concessions or other authorizations in terms of any law;
- developing and implementing a preferential procurement policy;

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<sup>1</sup> In principle, only companies that have met the Nigerian Content requirements are to be registered on the JQS. In practice, the e-market place is called the Nigerian Petroleum Exchange (NiPEX), and the JQS is called the Nigerian Joint Qualification System (NJQS). To be pre-qualified on the NJQS, and allowed to bid on the NiPEX platform, the oil service company has to go through a detailed audit. The audit covers a host of issues including Nigerian Content. It is unlikely that companies that have not met the requirement of the Nigerian Content law would qualify and be registered to participate in bids.

- determining qualification criteria for the sale of state-owned enterprises; and
- developing criteria for entering into partnerships with the private sector.

It is therefore obvious that the empowerment law favors those entities that satisfy the requirements in whatever code of good practice the Minister of Trade and Industry issues. The last codes of good practice were issued in 2007 and what follows is a summary of how they are meant to apply.

The issued code of good practice requires that all enterprises intent upon doing business with organs of state be given a compliance score based upon the extent to which they have met targets set regarding such elements of black economic empowerment such as ownership, management control and skills development. The list of the elements of black economic empowerment is embodied in table 1. There are seven elements of black economic empowerment. Each element is given a weighting, so that the total score is 100. The score an enterprise receives for each element depends on what percentage of the target they have met. For instance, a company that has met 50% of the target black ownership requirement receives a score of 10 (equal to 50% of 20). The target for black ownership is 25% + 1 of the voting rights in a company<sup>2</sup>. The other elements also have their target levels. The score for each element is then summed up to determine the company's degree of black economic empowerment compliance. Based on the summed scores, enterprises are further classified based on level of contribution as illustrated in table 2.

There are a few things to note about table 2. First, enterprises with a score less than 30 are deemed non-compliant and would find it difficult to conduct business with any organ of state. Secondly, the idea is that government departments can use the scores to determine enterprises that are prequalified to do business with them. For instance, a government department can specify that only enterprises that are Level 4 contributors or above are prequalified to bid for certain projects. Thirdly, our presentation undoubtedly simplifies things, e.g. the total score could theoretically exceed 100 because it is possible to get bonus points for empowering disabled South Africans or for employing women and giving them significant managerial control. Fourth, the fact that preferential procurement is a relatively large measure on the compliance score has strategic implications. It means a company's ratings are boosted if it buys from compliant firms. The "suppliers' ratings in turn depend on the ratings of their suppliers, and so the pressure to become BBBEE compliant is spread all the way down the value chain<sup>3</sup>". Hence, even if an enterprise does not conduct business directly with organs of state, it may find itself increasingly locked out of business opportunities if it does not improve its' black economic empowerment credentials.

Table 1: B-BBEE and Weightings

<b>B-BBEE ELEMENT</b>	<b>WEIGHTING (sums to 100)</b>
Ownership	20
Management Control	10
Employment Equity	15
Skills Development	15
Preferential Procurement	20
Enterprise Development	15
Socio-Economic Development Initiatives (SEDI)	5

The Broad-Based Black Economic Empowerment Act does not impose any penalties for non-compliance but the manner in which it is implemented can make those enterprises that do not comply fall foul of law

<sup>2</sup> This target level has presumably been set because under South African company law, 75% of the voting rights are required before companies can pass special resolutions.

<sup>3</sup> This quote is from an undated marketing brochure titled "BBBEE explained: An easy guide to understanding Broad Based Black Economic Empowerment" by Standard Bank of South Africa.



enforcement. It is important to note that it is only “accredited BEE verification agencies” that can check and certify the generic B-BBEE score of an enterprise. Any deliberate misinformation given to these agencies is “fraud” and could result in criminal charges being filed under existing anti-misrepresentation laws.

Table 2: B-BBEE Status and Qualification

<b>B-BBEE STATUS</b>	<b>QUALIFICATION (TOTAL SCORE = <math>x</math>)</b>
Level 1 Contributor	$x \geq 100$
Level 2 Contributor	$100 > x \geq 85$
Level 3 Contributor	$85 > x \geq 75$
Level 4 Contributor	$75 > x \geq 65$
Level 5 Contributor	$65 > x \geq 55$
Level 6 Contributor	$55 > x \geq 45$
Level 7 Contributor	$45 > x \geq 40$
Level 8 Contributor	$40 > x \geq 30$
Non-Compliant Contributor	$30 > x$

In addition, the B-BBEE policy framework has at its core, other supporting legislation such as the Employment Equity Act (1998), the Skills Development Act (1998), the Skills Development Levy Act (1999), and the Preferential Procurement Policy Framework Act (2000). These supporting statutes also have to be obeyed and penalties could be imposed for infringements. The B-BBEE act therefore constitutes a far reaching affirmative action framework and it is one that any corporation considering investing in South Africa needs to be aware of. The scale of operations of most potential foreign entrants into South Africa means that the law cannot be avoided<sup>4</sup>. The issue becomes one of how to respond to it.

#### Elements of Nigerian & South African Affirmative Action

Before we dive into the analysis of how best to respond to the affirmative action laws, it is best to briefly point out differences between the elements of affirmative action in the laws of both countries. This is done in table 3. From the table we can see that both countries are concerned about ownership, management control, employment equity, skills development, and preferential procurement. Nigeria, unlike South Africa, is not concerned with enterprise development and socio-economic development. On the other hand, South African affirmative action laws ignore the elements of local fabrication and technology transfer, which are crucial concerns for Nigeria.

Table 3: Country to Which Element of Affirmative Action Law Applies

<b>ELEMENT OF AFFIRMATIVE ACTION LAWS</b>	<b>NIGERIA</b>	<b>SOUTH AFRICA</b>
Ownership	YES	YES
Management Control	YES	YES
Employment Equity	YES	YES
Skills Development	YES	YES
Preferential Procurement	YES	YES
Enterprise Development	NO	YES
Socio-Economic Development Initiatives (SEDI)	NO	YES
Local Fabrication & Production	YES	NO
Technology Transfer	YES	NO

<sup>4</sup> Entities with less than 5 million rand in annual turnover are exempted. They are officially referred to as Exempt Micro Enterprises. They automatically qualify as Level 4 contributors. If they are black owned, they are elevated to the Level 3 Contributors. Multinationals, by virtue of their size, are unlikely to qualify for this sort of exemption.

The differences, as mentioned earlier, can be traced to the separate histories of both countries. Nigerians believe they already have developed enterprises but that they require an affirmative action law to prevent further discrimination by foreigners operating in their oil and gas industry. Black South Africans feel they have been excluded from participating meaningfully in the economy by white settlers who enforced apartheid era laws. They are therefore interested in enterprise development, but have no real reason to insist on local fabrication in the manner Nigerian law does.

### Implicit Theories of Change

Having studied a plethora of companies, Beer and Nohria (2000) reasoned that there are two implicit theories of change. Whenever corporations embark upon change initiatives, their activities fall within either of the two archetypes. The first implicit theory or archetype is "Theory E". Theory E is a theory of change based upon economic value. Change of this nature has features such as restructuring, layoffs and downsizing. Theory E requires focus on the structure of the organization, and rapid turnaround as a means to enhanced shareholder value is its main aim. It is regarded as a "hard" approach to change. Senior executives who adhere to this approach to change are usually vilified by the public, but are loved by their shareholders, who they believe are their prime constituency.

"Theory O" is the "soft" approach. It is change based on developing organizational capability through individual and organizational learning. The employees are nurtured and a corporate culture based on commitment is developed. The organization therefore has, and maintains a "psychological contract" with its' employees. Change is therefore an iterative process that is based on obtaining feedback, reflecting, and making further changes.

Both theories could seem like polar extremes. Further differences between the two theories are highlighted in table 4. As can be seen, the differences also extend to the reward systems and how consultants are used. In theory E change, motivation is through the use of financial incentives and consultants analyze problems as well as shape change. In theory O, on the other hand, pay is fair exchange and motivation is through commitment. Management shapes its own solutions albeit with the support of external consultants.

The main point from the Beer and Nohria (2000) thesis is that neither theory of change puts a company on a sustainable long term path. That is, theory E's constant focus on shareholder value can have a detrimental effect on morale and organizational capabilities, while theory O's penchant for developing corporate culture and maintaining psychological contracts does not always provide a clear positive relationship with the bottom line (or shareholder value). The only correct way to carry out sustainable change is therefore, to combine both approaches to change. Senior management has to be careful about the way they combine these two archetypes. They could carry out both types of change sequentially, but this would require a lot of time, and it may not be practical to follow theory O's soft approach with theory E's hard approach due to the sense of betrayal employees would feel.

The best way to combine both approaches without ignoring the concept of shareholder value and without ignoring the psychological contracts is listed in table 4. It would be ideal to, from the outset, explicitly embrace the paradox between economic value and organizational capability. A successful change initiative requires both building corporate culture and having an efficient organization structure. Financial incentives should be used to reinforce change not to drive it, and direction must come from the top but lower level workers must be engaged so that they feel valued and any useful ideas they have can be incorporated into the change process over time. Beer and Nohria (2000) found that corporations that combined both approaches in this manner were the ones with the most viable change propositions. Those that adopted only theory E, or only theory O, could have some success, but such success is hardly ever enough to put them on the path to long term survival as independent entities.

Table 4: Dimensions of change and combination – source: beer and nohria (2000).

Dimensions of Change	Theory E	Theory O	Combined/Composite Theory “E” and “O”
Goals	Maximize Shareholder Value	Develop Organizational Capabilities	Explicitly Embrace the Paradox between Economic Value & Organizational Capability
Leadership	Manage Change from the Top Down	Encourage Participation from the Bottom-Up	Set Direction from The Top and Engage The People Below
Focus	Emphasize Structure & Systems	Build up Corporate Culture: employees behavior and attitudes	Focus Simultaneously on the hard (structure & systems) and the soft (corporate culture)
Process	Plan & Establish Programs	Experiment & Evolve	Plan for Spontaneity
Reward System	Motivate Through Financial Incentives	Motivate through Commitment – Use Pay as Fair Exchange	Use Incentives to Reinforce Change not to Drive it
Use of Consultants	Consultants Analyze Problems & Shape Solutions	Consultants Support Management in Shaping their Own Solutions	Consultants are Expert Resources who Empower Employees

### Theory AA

In this paper, we introduce theory AA. Our reason for doing this is to introduce an archetype that encompasses the forms of organizational change characteristic of those entities that are trying to comply with affirmative action laws. The truth is that the changes that are brought on by affirmative action laws are neither “hard” nor “soft”. They are a completely different type of change altogether. They are changes that are required, but do not have as their objectives, either the maximization of shareholder value or the development of organizational culture. Change that corporations make in order to comply with affirmative action laws are a separate change program and are in effect a constraint on any other change initiatives that a company can embark upon. Theory AA therefore, is change that has to do with the ownership requirements of the law, management control, employment equity, skills development, preferential procurement etc. Entities that are engaged in this third archetype of change are only focused on meeting the legal requirements of the affirmative action laws. The main differences between theory E, theory O, and theory AA, are captured in table 5.

As can be seen from the table, theory AA is totally and completely different from the other theories expounded by Beer and Nohria (2000). Our observation is that many companies get jittery in the face of affirmative action laws in emerging market economies and can start to focus exclusively on it. They implicitly accept that the laws are a constraint on how they operate, and they reward solely based on set affirmative action targets. They also employ consultants solely to give advice on how best they can meet the affirmative action requirements.

There is no doubt that many companies operating in emerging markets may have to change their approaches to accommodate such laws, but it is difficult to argue that their focus should now be exclusively on affirmative action targets. The fact that shareholder value and organizational culture are still important for long term survival leads us to argue that the appropriate response to affirmative action laws is to combine theory E, theory O, and theory AA. Table 5 shows how the combined strategic approach can be carried out. Senior management must now explicitly embrace the paradox between economic value,



organizational capability, and affirmative action. When incentives are used, they should be meant to reinforce changes (including changes to affirmative action practices), not to drive them. Direction must come from the top, line managers should be left to implement the affirmative action changes, but these managers should be encouraged to incorporate any useful suggestions coming from lower level employees. The role of consultants should be to empower these line managers to shape their own affirmative action solutions. Any change initiative that completely ignores economic value and organizational culture would undoubtedly be short lived. In what follows, we would discuss what the combination of theories E, O, and AA imply for how corporations should respond to specific elements of affirmative action laws.

Table 5: Dimensions of change and combined theory “e”, “o” and “aa”.

Dimensions of Change	Theory E	Theory O	Theory AA	Combined/Composite Theory “E”, “O” and “AA”
Goals	Maximize Shareholder Value	Develop Organizational Capabilities	Meet Requirements of AA Laws	Embrace Explicitly the Paradox between Economic Value, Organizational Capability and AA Laws
Leadership	Manage Change from the Top Down	Encourage Participation from the Bottom-Up	Lead in a Manner Consistent With AA	Set Directions from the Top, Let Line Managers Implement AA policies, & encourage Bottom-Up Participation
Focus	Emphasize Structure & Systems	Build Up Corporate Culture: employees behavior and attitudes	Emphasize the Need Not to Break AA Laws	Focus Simultaneously on the hard (structure & systems), the soft (corporate culture), and Affirmative Action
Process	Plan and Establish Programs	Experiment & Evolve	Accept AA as a Constraint On Business Process	Plan for Spontaneity Within the Boundaries of the AA Laws
Reward System	Motivate Through Financial Incentives	Motivate Through Commitment – Use Pay as fair Exchange	Reward Based on Set AA Targets	Use Incentives To Reinforce Changes (including changes to AA practice) but not to Drive It.
Use of Consultants	Consultants Analyze Problems and Shape Solutions	Consultants Support Management in Shaping their Own Solutions	Consultants Advice on How Best to Meet the AA Requirements	Consultants are Expert Resource Persons who Empower Line Managers to meet AA Requirements & other Employees in General

**Prescriptions for Business on the Specific Elements of Affirmative Action**

In this section we, analyze what the augmented theory of change proposes that corporations do regarding each of the specific elements of affirmative action listed in table 3.

### Ownership

The affirmative action laws require that there is significant local ownership in any company. Theory E's ultimate objective of maximizing shareholder value means not giving up any equity or only issuing shares at market value. Theory O's nurturing or commitment seeking approach would imply issuing equity to, or allowing workers and managers to purchase company shares. Theory AA simply follows what the laws say, i.e. shares must be owned by the designated affirmative action group.

The amalgam of these three diverging approaches is depicted in figure 1. The solution is that companies seeking ownership changes as a result of affirmative action laws would find it optimal to issue shares at fair market value to designated affirmative action groups, workers, and managers. Given that under affirmative action regimes, it is no longer practical or lawful to own operations 100% it is advisable that businesses make the changes the right way. If any business entity considers the ownership requirements of affirmative action laws unacceptable, it would be best for such corporations to stay away from locations with affirmative action rules until such time as they are willing to obey the laws of host countries, or until such time that the laws are changed.



Figure 1: Ownership

Bilfinger Berger is a German civil engineering and construction group with operations spanning five continents and annual turnover of approximately eight billion euros. Its associate company and main operating vehicle in Nigeria, called Julius Berger Nigeria PLC, has been quoted on the Nigeria Stock Exchange in 1991. Up until the end of 2011, Bilfinger Berger owned 49.9% of the shares of Julius Berger Nigeria PLC with the remaining 50.1% owned by Nigerians. With the company trying to deemphasize construction work for federal and state governments, and expand its' portfolio of oil & gas industry contracts, the company had to pay further heed to the Nigerian affirmative action laws. By the end of Q1 2012, Bilfinger Berger had sold 10% of its' shares to a strategic Nigerian partner leaving it with only 39.9% equity in Julius Berger Nigeria PLC. The purchaser of this 10% was an affiliated entity of the Nestoil group – a wholly owned Nigerian group that has over two decades of oil industry experience and that is well known in the oil rich Niger-Delta.

Julius Berger is therefore an example of a company that is trying to fulfill the legal requirements of the affirmative action laws the appropriate way. In addition to the above share transfer, Julius Berger set up two new wholly owned subsidiaries: PrimeTech Design and Engineering, and Julius Berger Medical Services. These two companies are wholly owned by the Nigerian associate company and therefore qualify for work under the Nigerian content laws. PrimeTech is a company set up to provide engineering and technical designs for the oil industry, an activity that is set to increase. The medical services entity is just to provide medical and health services for their employees and staff members. In essence, Julius Berger is encouraging commitment in the manner required by Theory O, it is issuing shares on the market as required by Theory E, and meeting the legal requirements as stipulated by Theory AA.

Some other foreign entities operating in Nigeria seek to satisfy the ownership requirements of the local content law by bidding for projects as joint ventures with indigenous Nigerian companies. This works sometimes. There are two ways to do this, i.e. an incorporated joint venture or an unincorporated joint venture. An incorporated joint venture in which the Nigerians own at least 51% of the share is best and automatically meets legal requirements. In addition, there is no rule that precludes the incorporated joint venture from entering into other value enhancing partnerships with the original foreign minority owner. For instance, Bilfinger Berger still has a technical services agreement with Julius Berger Nigeria for which the Nigerian company paid over US\$30 million in 2011<sup>5</sup>.

Unincorporated joint ventures are mere associations of companies that come together for project specific purposes. They also work, and they enable the partner entities to limit their risk to particular mutually acceptable projects. The downside of this is that they are unstable and prone to unraveling before projects are completed. For this reason they tend to lack credibility compared to the incorporated variant. Unincorporated joint ventures could symbolize the fact that the partner firms still do not trust each other enough to enter into a long term partnership. They exemplify a lack of commitment on the part of at least one party. They may even be a sign that one party is resisting making the necessary changes that would result in compliance with affirmative action laws. The most credible unincorporated joint ventures are those of closely related companies.

Cisco Systems is an American company whose approach to the ownership issues required by affirmative action laws conform to the prescription of our amalgamated change theory. In 2007 Cisco announced a black economic empowerment deal that would turn a local investment partner, an employee trust, and an education trust into shareholders. Cisco selected Lereko Investments, a black owned entity, as an investment partner. In addition, Cisco said they would create a trust for their black South African employees, as well as a trust to fund an education program. The plan was that Lereko would receive shares in the American parent company with a value equal to 20% of the equity of a new services company that would do business solely in South Africa. The employee and education trusts would together own shares with a value equal to 5.1% of the new services company. By so doing, Cisco satisfied the minimum local equity holding of 25% +1 required by the black economic empowerment law. The parent company's shares are openly traded on the NASDAQ and are issued to the South African investors at market value. Moreover, they ensured that the deal allowed for the employees as a group to also own an equity stake. All this reflects an approach that combines theory AA, with theories E and O. To ensure that the black investors were in it for the long term, the agreement stipulated that the shares acquired in the parent company could not be sold until 2017 – ten years after the deal was consummated. This was probably a necessary restriction for such a highly liquid stock.

The case of Cisco typifies the fact that tech companies usually prefer operating in emerging markets with wholly owned subsidiaries. Tech companies believe that their competitive advantage is based on their technological competence and a wholly owned subsidiary reduces the risk of losing control of that competence. Wholly owned subsidiaries, they argue, also enhance the secrecy surrounding proprietary technology. This may be true, and Cisco got around the problem presented by the South African affirmative action law by issuing stock in the parent American entity.

Some American tech companies operating in South Africa have taken a different route. The South African code of good practice provides an alternative to giving up equity. If a foreign company can prove that it is its' global practice to own subsidiaries 100%, the South African government allows them to do so, provided they carry out a social investment termed an "equity equivalent". This has been a highly

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<sup>5</sup> The technical services agreements of this nature are typically renewable every three years, subject to the Nigerian government's approval. The organ of government that oversees these agreements is the National Office for Technology Acquisition and Promotion (NOTAP).

controversial issue in South Africa but tech companies have jumped on the opportunity it presents to avoid issuing equity to blacks. HP was the first to get its “equity equivalent” proposal approved. HP proposed and has set up the HP Business Institute (HPBI), a large scale initiative designed to grow the pool of talent in the South African IT sector by skills development and enterprise development. These equity equivalent schemes ensure that corporations like HP get top marks for meeting the ownership requirements on the B-BBEE scorecard.

There is no doubt that some previously disadvantaged South Africans have benefited from partaking in programs at the HPBI. The skills of individuals are upgraded, and the business savvy of entrepreneurs is sharpened. The HPBI is good social work and brings good publicity, but from the point of view of the objectives of the black economic empowerment law does it not represent double counting? The main thrust of the HPBI encompasses skills development and business development – two activities that HP is supposed to carry out in conjunction with giving up a percentage of ownership of their local subsidiary. It can be argued that “equity equivalent” initiatives are a bit of a cop out. From the point of view of the combined theory AA, theory E, and theory O approach, HP fails to meet the mark. A social investment that is meant to substitute for giving up some ownership fails to accomplish the basic theory O tenets of building a commitment culture and maintaining psychological contracts with employees. HP’s approach does not present much room for employees to feel they have a stake in the upside of the business.

The route of “equity equivalents” may therefore not be the ideal in terms of making the changes that enhance the longevity of the business. It should also be noted at this juncture, that the concept of “equity equivalents” as it applies in South Africa, would not work, and would be totally unacceptable in Nigeria. HP does business in Nigeria and knows the terrain. In the oil and gas industry where the ownership requirements are 51% Nigerian, HP collaborates with indigenous partners. HP has come to realize that if it does not work with the partners, it would not get any substantial business. HP in Nigeria has developed different categories of partnerships with Nigerian companies such as the more high value “HP Gold Partners” and “HP Preferred Partners” to the lower level “HP Distributor” and “HP Authorized Retailer”. It is therefore arguable that the South African government, probably under pressure, erroneously created the opt-out mechanism termed equity equivalents for companies that would have probably complied if such a mechanism did not exist. Moreover, opting out of the requirement to issue equity to host country nationals might also not be ideal for companies that wish to build sustainable commitment based cultures within their organizations.

### **Management Control**

In the case of management control, Theory E’s focus on maximizing shareholder value simply means the corporation should employ those perceived to be the best managers no matter where they are from. Theory O’s objective of developing organizational capability and a commitment culture implies that the corporation should nurture and train existing managers. Theory AA simply requires that managers should be employed from within the designated affirmative action group. The combination of these three differing theories yields, as depicted in figure 2, a prescription, that the appropriate change for a business in an emerging market economy to make is to employ the best managers from the designated affirmative action group and train them to be even better. There are signs that multinational firms in both Nigeria and South Africa are coming round to this way of thinking.

Royal Dutch Shell, a British-Dutch multinational company headquartered in the Hague, is a good example. It has operated in Nigeria for over fifty years, but over the last decade, has sought to ensure that it is seen as incorporating local talent in its management. In January 2010, Shell appointed a Nigerian, Mutiu Sunmonu, Country Chair, for all Shell companies in the country. His appointment required that he combined the role of Country Chairman with his current role as Managing Director and Chief Executive Officer of the flagship Nigerian entity, Shell Petroleum Development Company of Nigeria, as well as that of Vice-

President of Production for the whole of Sub-Saharan Africa. His route to the top shows that Shell nurtures and trains talent. Sunmonu joined Shell in 1978 as a fresh graduate and worked as a business analyst. He subsequently rose up through various roles and undertook various international assignments. For instance, in 1990, he proceeded to Shell UK's Aberdeen office where he would end up spending three years as Information Planner/Portfolio Consultant. In 2001, he embarked on another foreign posting to Shell's headquarters in the Hague, where he served as Regional Business Adviser, and was part of the team that undertook the planning for Shell's gas pipeline from West to East China. He had therefore seen many facets of the company's international operations before he was given the top position.

We also see attempts at giving management control to designated affirmative action groups in South Africa. As of 2007, Cisco Systems claimed that 60% of the board of Cisco South Africa is made up of black South Africans. In addition, 60% of its' senior management and 62% of its' junior management in South Africa are previously disadvantaged South Africans. In March 2012, Cisco announced the appointment of a black South African, Alpheus Mangale, as CEO of its South African subsidiary. Unlike in the Nigerian instance given above, this new CEO was not talent nurtured from within the organization. Alpheus Mangale was poached from another South African IT company. Even though Cisco tries to be a responsible inclusive international company, it is clear that this appointment was partially brought on by the need to enhance the company's interaction with a government dominated by blacks. As Duncan Mitchell, Vice President of Cisco's Emerging Markets Theatre said,

"South Africa is a priority country in Cisco's Emerging countries theatre and we're excited by all the opportunities and growth we're experiencing in the country as technology and talent unite. I'm confident that under Alpheus' leadership, given his proven expertise, Cisco will continue to engage strategically and successfully with both the government and key organizations to make a significant impact on innovation, productivity and sustainability in South Africa."<sup>6</sup>

There is thus, increasing competition to attract local managerial talent. Given that most blacks in South Africa were locked out of the formal business sector prior to 1995, it is clear that compared to those in Nigeria, large foreign companies operating in South Africa have had a much shorter period with which to nurture and train black managers. One way with which to speed up the growth of managerial capability revolves around the concept of "reverse expats".



Figure 2: Management Control

<sup>6</sup> As quoted in [www.techsmart.co.za](http://www.techsmart.co.za) on March 14<sup>th</sup> 2012.



A reverse expat is a local indigenous manager originating from an emerging market economy placed at the helm of a foreign company's operations in his home country, and rotated through some the company's operations in more mature markets. The rotation is for predetermined periods that enable the manager get a broader understanding of business functions, corporate culture, and of how to fulfill a wide range of customer needs. It is arguable that this approach accelerates the development of local managers and creates a more coordinated and sustainable organization. After the reverse expat completes his foreign rotations, he goes back to his home country to implement relevant practices and protocols that can foster corporate growth in the emerging market setting. This might be a good response to the requirements of the affirmative action laws in South Africa. It is obviously relevant to Nigeria as well, but the need for it seems more dire in South Africa where blacks were deliberately precluded from a lot of potential managerial work by the apartheid era regime.

Joerres (2011) argues that the era of the expatriate manager is at an end, and that any company that genuinely wishes to have sustained growth in emerging market economies should have a reverse expat strategy of their own. He advocates three practices that have been found to increase the likelihood of success with reverse expat strategies. Firstly, the objectives and expectations of the program need to be clarified. The reverse expat needs to know that the foreign rotations are not meant to be pleasant field trips or mere social responsibility. It must be made clear to the reverse expat and other managers that the program is intended as part of the planning for when operations in emerging markets become part and parcel of the global entity and possibly the prime growth engine. Secondly, the managers the reverse expat would meet on his rotations need to focus on coaching. There should be a significant amount of interaction as well as two-way dialogue, empathy, and a collaborative spirit. The reverse expat needs to be listened to so that he can give feedback on the value of the program. Specifically, he needs to be able to express whether in fact, he is learning all what he feels he needs to. Thirdly, the reverse expat strategy should seek to "adapt not transplant". The reverse expat is there to learn, but the idea is not to impose mature market practices that he knows would not work in his home environment on him. He needs to have the room to adapt any mature market practices to the institutional characteristics of the emerging market he operates in.

It is important to note that, although the discussion has focused on foreign entrants to emerging market economies, the black economic empowerment laws of South Africa also apply to home grown businesses. Large businesses that are owned by white South Africans are also required to give up a significant portion of managerial control to blacks. These businesses can also benefit from the prescriptions we have made herein regarding training and nurturing black managers. Qualified blacks can be employed and rotated through the major functional areas of any business. Blacks can be given accelerated immersions in the company's operations before they are given significant responsibility. Continuous assessment, coaching, and frequent feedback would help the managers grow and deepen their skills.

In addition, we should point out that our advocating that businesses should employ additional managers from the designated affirmative action group implies that firms can afford to do so. One way in which this can happen is if the business is expanding into new geographic markets so that the existing managerial appointees can be sent there as expatriates and the new ones take their place at home. This mirrors how some home grown South African companies have responded to the black economic empowerment laws. Some South African companies have simply expanded into other African countries to which they can send whites as expatriate managers and then employed blacks to take their place at home. In the case of businesses that have neither expansion plans nor the resources to hire new managerial hands, the replacement has to be gradual. Just how gradual depends on the pressure they feel in the market place and is likely to differ from one company to the other<sup>7</sup>.

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<sup>7</sup> In the case of Nigeria, there is a four year maximum period. If a managerial position had been filled by an expatriate due to the shortage of a certain managerial skill, the oil industry operator must provide a plan to the Nigerian government detailing how it intends to Nigerianize the position within four years.

### Employment Equity

We can also apply the change theories to the element of employment equity. Theory E adherents would seek to employ the best workers and layoff the unproductive ones. Theory O requires nurturing the employees and maintaining a psychological contract with them. Change in accordance with Theory AA would simply imply employing from the designated affirmative action group. The appropriate change for businesses to make, derived from combining the three divergent approaches, is to lay-off the existing unproductive workers and replace them with good workers from the designated affirmative action group that can then be nurtured and with whom psychological contracts can be maintained. This is depicted in figure 3. This combined approach is often not a problem in Nigeria. Even though the existing unproductive workers are from within the designated affirmative action group, businesses can still lay them off without breaking the law because the new ones they intend to employ are also Nigerian. The affirmative action law covers all the citizens in the country. In practice, the success of laying-off workers and replacing them with new intakes will depend on how well the firm negotiates with trade unions in the face of the insider-outsider issues that can arise under such circumstances. Productivity must be clearly defined and the assessment of workers plainly verifiable otherwise it is likely that unions would protect the existing workers (insiders) rather than allow more productive workers (outsiders) to get employed.

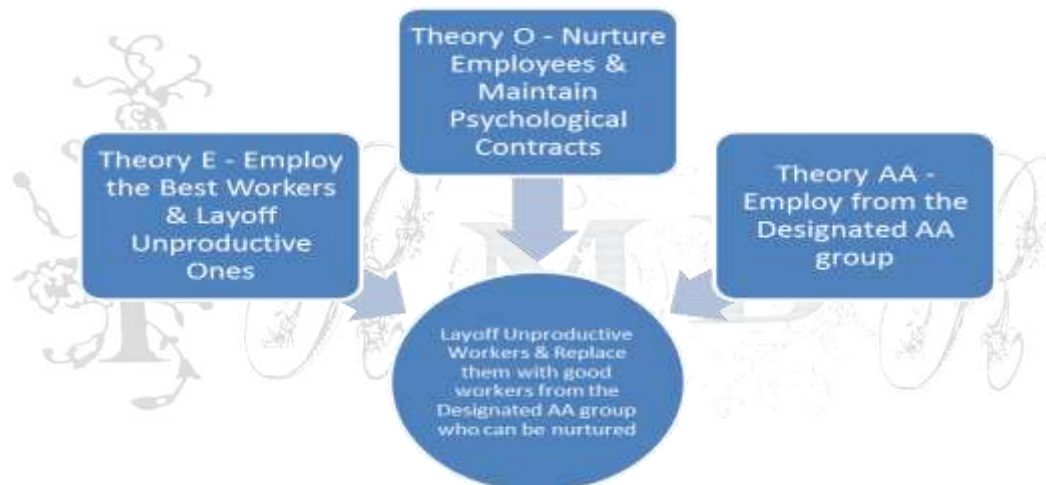


Figure 3: Employment Equity

In essence, even though the law stipulates that only Nigerians can be employed in junior and intermediate cadres, there are not many opportunities to do otherwise. Employment equity is usually not a problem in Nigeria. There are not many non-Nigerians available in the country. It is likely that if a Nigerian worker has his employment terminated, he would be replaced by another Nigerian. One possible exception to this is the Chinese enterprises. The Chinese companies, typically state owned, are often accused of flying in plane loads of workers for their projects. This practice as Gong (2007) reports is widespread across Africa, and the Chinese companies always

“...prefer to bring their own workforce. They bring their mentality and business practice from China, ignoring the local civil society, and focusing on working with the governments. Furthermore, they openly discriminate against the African labor forces, and are very hostile to labor unions and labor rights organizations.”

Most of the Chinese workers flown in are treated as illegal immigrants whenever Nigerian authorities find them. Moreover, incidents where the Chinese have been accused of such practice are not in the oil and gas

sector which the Nigerian content law focuses on. The Chinese have thus far, not been very successful with regards to getting a foothold in the oil and gas industry.

Our prescription that unproductive workers should be laid off and replaced with good workers from the designated affirmative action group is therefore likely to be an effective strategy in Nigeria. In South Africa, on the other hand, the designated affirmative action group is made up of blacks, but the existing unproductive workers that are to be laid off, may or may not be black. In fact, it is more than likely that they are white. Selby and Sutherland (2006) refer to the replacement of existing workers with those from the designated affirmative action group as “space creation” and argue that it runs the risk of causing racial tension. In fact, Janse van Rensburg and Roodt (2005) found that the perception of the affirmative action laws depends strongly on an individual’s racial group. Afrikaans, a white group, feel very threatened by these laws. It is therefore crucial, that any South African enterprise replacing existing workers with those from the designated affirmative action group, make sure that it is very clear that productivity is the key to deciding who retains a job and who does not. It is essential that there is maximum communication and openness about how productivity is measured to ensure that the company does not become a battleground for racial warfare. Not only is it possible that the bad feeling between races creates a bad working environment for the employees, it is also likely that the company’s products can start suffering in the market place if people from the sacked ethnic group target the company for boycotts. Companies engaging in workers replacement must base it on fair and verifiable measures of performance.

An important component of employment equity is the aspect of creating opportunities for black women to be gainfully employed. It is not specifically stated in Nigerian law, but it is a large part of the South African affirmative action code of good practice. Although females are under-represented in the workforces in the formal sector, van Klaveren et al (2009) report that in South Africa, black women have on average attained a higher educational level than black men. For instance, by 2009, 50% of women employed had completed secondary or tertiary education compared to the comparative figure of 45.5% for men. Based on a study of women in other emerging market economies where women were attaining higher educational qualifications than men, Hewlett and Rashid (2010) advocate three practices to increase the pool of female talent within an organization. First, it is important to find the females early in their career life cycles, probably soon after they have completed their tertiary education programs. Secondly, companies should help women build networks both within and outside the company. Internal networks can make the female employees feel more valued and less isolated, while external networks give the women a sense of community and a broader support system. Thirdly, it is crucial that the women are given international experience to enable them broaden their horizons and imbibe the skills that are essential for long term career development.

### **Skills Development**

The appropriate response to the skills development element of affirmative action is easy to uncover by once again combining the approaches suggested by the three implicit theories of change. Theory E requires training and skills development for employees on the functional skills most required to ensure that the corporation maximizes its profitability and market value. Theory O would require that more general training be given to employees to enhance their self-development in order to foster a wider range of organizational competences. Theory AA would imply that the company changes by giving as much training as possible to the designated affirmative action group. The combination of the three approaches, as illustrated in figure 4, yields a prescription, that the appropriate change strategy to adopt would involve a combination of general and specific functional training to the designated affirmative action group.

A lot of businesses still focus on “specific” functional training for individuals from the designated affirmative action groups. The training provided is more vocational than more broadly educational. An example of this is the Shell Petroleum Development Company and how it operates in Nigeria. The training it gives is mainly functional, i.e. it imparts training on such functional areas as, project management, health

and safety, welding, deepwater skills, and diving. Training on these, equips employees with specific skills that the company needs but it does not broaden the horizons of individual employees and it only fosters a limited degree of commitment. True nurturing would involve training that combines formal academic education with vocational training. This is not to say that Shell does not send Nigerians for formal education. It does. In fact Shell has various scholarships programs and many Nigerians have benefited from them. The problem is that these scholarship programs are part of what Shell deems corporate social responsibility and are therefore targeted at people in the society who qualify for them rather than Shell employees. Whilst reaching out to society at large is laudable, our own combination of the implicit theories of change suggests that it may be worth Shell's while to offer some academic scholarships to some of their own employees as well. Nigerian employees within Shell would benefit from some broader training opportunities as well as the functional skills development programs they already have access to. Shell would in turn, benefit from a happier more committed group of employees with expanded horizons<sup>8</sup>.

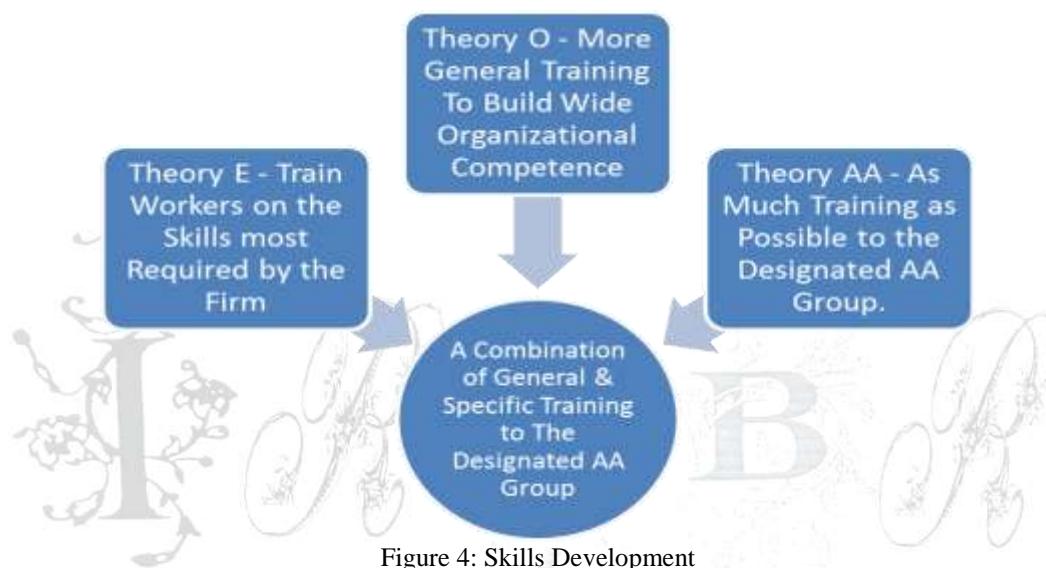


Figure 4: Skills Development

The same goes for companies operating in South Africa. They do not seem to see that they need to combine the functional training of their employees with a modicum of formal education. Veolia Water Solutions & Technologies is a French entity specializing in water treatment. Its' South African subsidiary has recently been trying to increase its' black empowerment credentials. Veolia has developed a workplace skills plan as required by South African law. The plan allows for a number of black engineering students to do their one year in service training with the company. This is training specific to industrial functions. The company also awards bursaries to two black students in KwaZulu-Natal every year to study second year chemical engineering at University. This is much needed academic training. Again we see a company that treats the bursaries as a social investment, rather than a device that can help foment psychological contracts with individual beneficiaries. The company could reap substantial benefits if it also regarded the beneficiaries of the bursaries as potential targets for future employment. By and large, companies need to change their skills development plans to one that gives out a bit more general academic education and tries to retain the individuals who have been trained under such programs.

<sup>8</sup> It is arguable that although individuals who get scholarships from Shell to undertake academic degree programs are not bonded to work for Shell after their studies are completed, it would be wise for Shell to give them full time jobs rather than leave them to work in other industries or for competitors. Those individuals whose education has been funded by Shell could possibly be the ones most likely to develop a "psychological contract" with the corporation.



**Preferential Procurement**

Procurement under Theory E would be done from the cheapest source that meets the required quality standards. Much outsourcing derives from such thinking. Theory O adherents would procure from sources convenient and familiar to existing employees. This could be insourcing or procurement from familiar enterprises that you have or seek to build long term relationships with. Change in accordance with Theory AA would simply require procurement from the enterprises that fall within the designated affirmative action group. The compromise between the three paradigms is depicted in figure 5. The optimal approach to change is to procure from and build long term relationships with cost effective suppliers from within the designated affirmative action group.

In practice, the affirmative action sources may not be the cheapest at the outset but relationships can be built with the understanding that the affirmative action supplier is to meet lower price-points in the future. Suppliers from within the designated affirmative action group need to be given a chance before they can start to reap the effects of learning curve and scale economies. There just needs to be a fair starting point. The Nigerian local content law for instance, allows bidders who do not have the lowest quotes to win contracts if they have high Nigerian content in their proposal. It effectively recognizes that there may be a cost element to procuring locally. The South African points system can also ensure bidding success for a business with a higher level of empowerment compliance than for one with low quotes and a low level of empowerment compliance.

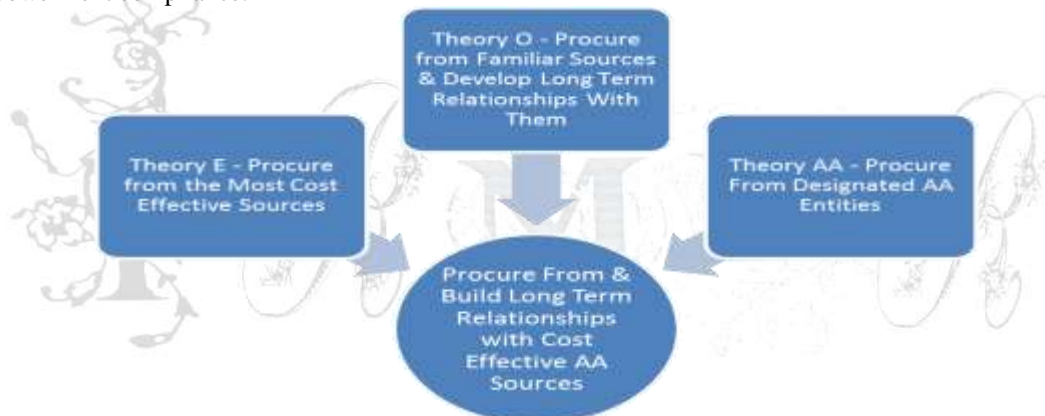


Figure 5: Preferential Procurement

Shell has to some extent demonstrated its commitment to preferential procurement from Nigerian Service providers. In 2010, Shell awarded a landmark contract to Caverton Helicopters, a Nigerian owned provider of aviation services to the oil and gas industry. The contract, awarded after a rigorous bidding process, has a total initial value of US\$ 694 million and requires Caverton to provide aviation logistics for five years with an option to extend for an additional two years. Shell’s commitment to developing a mutually beneficial long term relationship is reflected in the fact that Caverton was appointed for the work even though it did not have the specific model of helicopter that Shell desired in its existing fleet. Shell therefore loaned Caverton US\$ 85 million to enable it procure six AW139 aircrafts, a medium sized multi-purpose helicopter often commonly used for personnel transport to offshore oil platforms. This was the largest ever contract between an international oil company and a Nigerian owned company. Caverton would repay the loan from the proceeds of the contract.

With preferential procurement the possibility of front companies always arises. In the case of Caverton, it works in partnership with a Danish company, Dancopter and one could be tempted to ascribe the award of such an unprecedented contract to pre-arranged fronting. As Blanchflower and Wainwright (2005) however



pointed out, the existence of front companies would usually mean employment does not increase amongst persons that fall within the designated affirmative action group. That was far from what transpired here. In the words of the Chairman of Cavertron,

“...in the two years since this company signed the contract with Shell, it has grown from a company with a staff strength of 90 persons to over 500, creating a pool of highly skilled Nigerians that can work anywhere in the world<sup>9</sup>.”

Fronting was not the case here but it does happen. It is not advisable for companies operating in emerging market economies to embark on it. In Nigeria, the penalty is cancellation of any contract that emanates from it or a fine of 5% of the contract value. In South Africa, fronting is regarded as fraud and legal prosecutors treat it as such.

Preferential procurement is supposed to be economy-wide in South Africa but it appears that efforts to get the large corporations to embark upon it are not yielding fruit fast enough. Kumba Iron Ore, a subsidiary of Anglo-American, for instance, in value terms only expended 39.1% of its discretionary budget on purchases from black empowered entities in 2010. Herrington and Overmeyer (2006) report that a lot of corporations in South Africa do not even have preferential procurement policies. Of those that do, there is a sense in which they do not know which black empowered enterprises can be deemed competent suppliers. The black entities are viewed as having inadequate administrative skills and tend not to adhere to quality specifications and delivery timelines. The best way out of this for sincere corporations that genuinely wish to procure more from enterprises owned by previously disadvantaged groups is to focus on a small number of black enterprises and give them assistance and training. When these supply companies realize that what is on offer is a long term relationship, they are more likely to sit up and place a higher value on the feedback they get from the purchaser. A supplier who believes he is only being offered a one-transaction project is likely to behave very differently from one who feels he is going to have multiple contact episodes. It is important that purchasers give the small black enterprises an understanding of how they fit into the big picture so that they can have proper understanding of why quality standards and delivery deadlines are important. Training is necessary for a fruitful symbiotic relationship. Our prescription here therefore, is that when preferential procurement is being hindered by inexperience from those in the designated affirmative action group, some “enterprise development” may become necessary<sup>10</sup>.

### Enterprise Development

Maintaining or increasing shareholder value as intended under theory E change, implies that you carry out enterprise development only if the target enterprise is a strategic fit with yours. This could mean the beneficiary entity's output is an input you need, or the beneficiary entity supplies a product complementary to yours. Theory O's aim of developing organizational capabilities and a commitment culture means you only develop outside entities that can help with these. One possibility here is that the beneficiary institute could be a training institute where employees go to learn and get skilled up. The truth though is that both Theory E and Theory O are based on organizational selfishness and do not explicitly consider or encourage the development of entities outside the primary organization. With regards to enterprise development, these two theories only make implicit contributions and their prescriptions are not likely to be very far apart.

<sup>9</sup> The Chairman of Cavertron Helicopters, Mr. Aderemi Makanjuola, quoted in *This Day* Newspaper, 23 March, 2012.

<sup>10</sup> Herrington and Overmeyer (2006) also say that a “culture of entitlement” on the part of some black owned enterprises also makes it difficult for large companies to engage them in a positive manner. Our view is that this could be either real or perceived. It is important for procurement managers in the large corporations to ascertain whether or not these are false perceptions. It is also essential for black owners to tone down any sense of entitlement that could adversely affect their ability to secure business. In instances when the sense of entitlement is real and a hindrance to efficient collaboration, it is best for the purchaser to avoid such suppliers and seek alternative sources from within the designated affirmative action group.

Theory AA would simply advocate developing enterprises that are owned by personnel that fall within the designated affirmative action group.

As shown in figure 6, the meshing of the three different theories suggests that the optimal change strategy is to develop enterprises owned by individuals from within the affirmative action group that are a strategic fit with the primary entity and that can help enhance or expand organizational capability. If the primary corporation develops a black empowered entity that produces inputs to its production process or goods that are complementary to its own, the primary corporation is effectively expanding its' organizational capability because it would now have an associate company committed to its' success. Both the primary and target entities would come to epitomize a culture of mutual dependence.

A good example in South Africa is Veolia Water Solutions & Technologies. Veolia invested in a black empowered company called Malutsa. The investment resulted in Veolia owning 30% of the equity with the remaining 70% owned by black South Africans. Malutsa's business focus is the design, construction, maintenance and servicing of water and wastewater treatment plants. Exactly the same commercial focus of Veolia, except that Malutsa does it on a smaller scale. Veolia refers to Malutsa as its black economic empowerment arm. They are in the same field of endeavor and often bid jointly for contracts where the need for black economic empowerment is a crucial factor for prequalification. In 2009 Veolia and Malutsa won their first joint contract to supply a water treatment plant to the Kareeberg Municipality, on the understanding that Veolia would do drawings and procurement while Malutsa would do project management, construction, installation, and commissioning. Veolia has another wholly owned subsidiary in South Africa called Membratek which manufactures reverse osmosis membranes and tubular ultra-filtration equipment used for water treatment. As a result of the business alliance, Malutsa now has access to Membratek's range of products. For Malutsa this represents access to needed technology, and for Veolia, Malutsa becomes an additional committed sales channel for its manufactured filtration products.



Figure 6: Enterprise Development

Enterprise development if done properly, can be more than just charity, it can bring benefits to the primary corporation as well. Enterprise development is not required by the Nigerian local content laws, but some entities still do it because of its benefits to their preferential procurement programs. ExxonMobil for instance, calls it "Supplier Development" and in 2011, under one such program they used 2,000 metric tons of steel pipes fabricated in Nigeria on an offshore field. This was the first time an international oil company had used pipes made in the country for an offshore application. ExxonMobil had however, worked with the

Nigerian manufacturer<sup>11</sup> to ensure that their specifications were met. ExxonMobil retained experienced inspectors to train the manufacturer in proper pipe milling procedures. In addition, ExxonMobil sent some of the manufacturers' employees to the USA to learn about American engineering standards. Manufacturer representatives were made to accompany ExxonMobil staff on joint visits to study more established milling facilities in South Korea.

### Socio-Economic Development Initiatives

Theory E adherents would only support socio-economic development initiatives that bring back something to the company. The behavioral constraint of maximizing shareholder value means that any corporate social expenditure must not be mere charity or philanthropy. One category of social spending that can have congruence with the theory E paradigm is "sponsorship" that forms part of the corporations marketing communication mix. Theory O practitioners would also face the constraint that any social spending must either build organizational capabilities or enhance the commitment of corporate employees. Theory AA's position regarding socio-economic development spending is that it must directly benefit the designated affirmative action group. As shown in figure 7, harmony is reached between the three approaches if the business adopts a strategy encompassing sponsorship that forms part of the company's marketing communication, gives the company a halo effect that boosts its image with the general public and employees, and aids the designated affirmative action group.

Farrelly and Greyser (2007) suggest that sports sponsorship, as part of corporate marketing, improves performance as well as fosters a commitment culture within organizations. The strategy is called Sponsorship Linked Internal Marketing (SLIM), and can definitely be used as a response to the affirmative action laws. Care must however be taken as the South African codes of practice stipulate that any sponsorship must have "... the specific objective of facilitating sustainable access to the economy for beneficiaries". This means that the opportunities to use sports sponsorship effectively are limited. Individual athletes from within the designated affirmative action group can be sponsored, but there are not very many teams made up solely of individuals that fit within the definition of previously disadvantaged peoples. In addition, any corporation that embarks upon the sports sponsorship route would have to make sure they have cogent arguments about how sponsoring a sportsman gives him sustainable access to the economy. It is not impossible to argue this convincingly, but it may be difficult.

Information and Communications Technology based sponsorship initiatives targeted at rural dwellers are a common favorite in South Africa. The rural dwellers typically do not have any computer skills and are often illiterate. Arellano et al (Undated) give the Microsoft Digital Village as an example of an Information and Communications Technology based socio-economic development initiative. It was launched in 1997 with the objective of "providing communities, schools, students and entrepreneurs with up-to-date technology to improve their literacy skills and to be able to communicate and utilize the tools offered by the internet" (Arellano et al; pg.12). This is no doubt good publicity for Microsoft. It helps the under-privileged and can also increase the pride felt by Microsoft's South African employees.

Socio-economic development initiatives are not required by the Nigerian local content statute but some large companies in the oil and gas sector still carry them out. In Nigeria, they are more often referred to by the familiar moniker, Corporate Social Responsibility. The American multinational, Chevron Corporation, active in Nigeria and exporting an average of over half a million barrels of crude oil per day, is a good example. Chevron signs Global Memorandum of Understanding (GMOU) with communities that host its operations in Nigeria's oil rich Niger-Delta. The GMOUs are multi-year agreements with the communities regarding what infrastructural projects Chevron would fund/sponsor during the period in question. The

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<sup>11</sup> The manufacturer is SCC Nigeria. Their mill is located in Abuja.

projects funded include roads, bridges, water treatment plants, town halls, hospitals, public restrooms, and a host of others. In 2010 for instance, Chevron’s net contribution to GMOUs exceeded US\$10 million. There is no doubt that the Nigerian host communities derive some benefit from these. The initiatives also give the company a better public image than they had in Nigeria before. Chevron’s Nigerian employees also get some satisfaction from the fact that they are now seen as giving back to communities that had long been exploited, abused, and neglected<sup>12</sup>.



Figure 7: Socio-Economic Development Initiatives (Sedi)

### Local Fabrication and Production

Once again the best approach to this element of affirmative action laws is to find the overlap between the three alternative implicit theories of change. Theory E’s approach of maximizing firm value would insist on fabrication wherever it is cheapest to do so. Theory O’s disciples would advocate fabrication or production at a location that is convenient and makes it easy to develop organizational capabilities perhaps by experimenting and evolving. The appropriate approach by theory AA would be to fabricate in the location required by the affirmative action laws. With reference to figure 8, we can state that the best response for a business is to either choose the cheapest location or the most convenient location out of those that satisfy the affirmative action law.

Essentially, local production is best, but it is up to the firm whether it chooses the cheapest of the convenient locations or the most convenient of the available cheap locations. This distinction is important. In Nigeria for instance, very few companies would opt for the most convenient of the cheap locations instead of the cheapest of the convenient locations. A cheap location can simply mean land is inexpensive and easy to acquire, but it may be inconvenient in the sense that workers would be reluctant to locate there. A production facility that finds it difficult to attract and retain staff is probably dead *ab initio*.

One Nigerian success story is Dorman Long Engineering. Although of British origin, it is now a wholly Nigerian owned entity. The company is the largest fabrications contractor in the Nigerian oil and gas industry, with oil industry majors such as Chevron, Shell, ExxonMobil, Saipem and Daewoo as clients. They specialize in high precision steel fabrication. The bulk of the oil industry equipment that is rolled out

<sup>12</sup> It is also arguable that the real benefit to Chevron’s employees from these initiatives is that they get kidnapped by Niger-Delta militants a lot less. There can be no doubt that a greatly reduced threat of kidnap and possible bodily harm enhances their commitment to Chevron!!!



of Dorman Long’s facilities is for use or installation in Nigeria’s Niger-Delta. The truth however, is that all the fabrication is done in Lagos, approximately an hours flight time from the main Niger-Delta centers. Dorman Long has three fabrication facilities in Lagos and none in the Niger-Delta. The locations in Lagos are the most convenient rather than the cheapest. One of the centers operated by Dorman Long is a naval dockyard. Very large fabrications are done or assembled at the dockyard and loaded on sea going barges at the sites integral deep sea quay for onward transportation to the Niger-Delta or locations offshore the Niger-Delta. It would have been cheaper to find locations for fabrication closer to the points of use in the Niger-Delta, but Lagos was decidedly more convenient given that they had a longer history in that area and had an army of skilled employees that might have revolted or defected if relocation was being seriously considered.



Figure 8: Local Fabrication & Production

Local fabrication is not an element required under the South African empowerment laws. It could not have been. The black economic empowerment law is designed to give previously disadvantaged black South Africans economic opportunities similar to those white South Africans have or have had. The white South Africans considered South Africa their homes and were already fabricating there. They never really intended to fabricate elsewhere. The story might be a little different for foreign enterprises seeking to do business with South Africa. Although they are not required by law to fabricate locally, if they can satisfactorily meet the requirements relating to the other elements of the black economic empowerment laws, it would be wise for them to consider it. The entire objective of promoting local fabrication is not just to build local capacity, but also to create local employment. South Africa has such a high unemployment rate<sup>13</sup> that it puts pressure on the government to adopt a protectionist posture towards their industries. The government has increasingly used anti-dumping duties against foreign companies that export significant amounts in value terms to South Africa<sup>14</sup>. Local production or fabrication may be a way for foreign businesses to circumvent this bogus new threat to free trade<sup>15</sup>. The popularly held view is that the Chinese are the main targets of such anti-dumping investigations and duties because their ability to produce cheaply increasingly means they price low and outcompete existing manufacturers in South Africa. There is some truth to this, but South Africa has developed a very bad reputation as a country that abuses anti-dumping proceedings and it is by no means true that they only target the Chinese<sup>16</sup>. Businesses that regard the South

<sup>13</sup> The official unemployment rate for South Africa in the second quarter of 2012 was 24.9%. South Africa has not had an unemployment rate lower than 20% at any time since 2000.

<sup>14</sup> See for instance, Jafta (2006).

<sup>15</sup> Economists have for a long time established the fact that local production increases as the probability of anti-dumping measures increase. See for instance Azrak and Wynne (1995).

<sup>16</sup> Kulkarni (2005) gives a good example of how South African anti-dumping proceedings can be a complete sham. He was reporting on how American poultry exporters were targeted.



African market as presenting long term sales prospects should therefore give some serious consideration to producing or fabricating locally. Once a legal regime allows anti-dumping duties to be imposed liberally or capriciously, it establishes a near equivalence to an affirmative action law that mandates local production.

### Technology Transfer

Technology transfer is the last element of affirmative action that we shall deal with. From theory E's perspective of maximizing shareholder value, it does not make much sense to transfer any technology. At best the company would only transfer technology that is already widely diffused. Theory O on its own would recommend transfer of technology or technological skills to close entities that help expand organizational capabilities. Theory AA firmly supports the transfer of technology to the designated affirmative action group. The strategy that establishes congruence between the three theories, as illustrated in figure 9, is to transfer already widely diffused technology to partner entities within the designated affirmative action group with a view to enhancing joint organizational capabilities.

Schlumberger is the world's largest oilfield services company. It employs over a hundred thousand people working out of 85 countries including Nigeria. The company's technologies cover a wide array of applications in geology, geophysics, and petro-physics. They are particularly well known for their software products that are used in oil exploration, oil production, and oil reservoir analysis. Products such as these are critical to oil asset owners who need subsurface and integrated project management tools to reduce costs and risks. They constitute a large chunk of the technologies in Schlumberger's portfolio and given that they are widely used in the industry, the company has no apprehension regarding increasing the number of people who know how to use them.

One method usually employed by Schlumberger to transfer this knowledge is via the "University Ambassadors Program". Schlumberger has relationships with 60 universities worldwide. The idea is that some of their software is used as part of structured technical courses offered to students. This way the students garner state of the art technical skills. In Nigeria, Schlumberger launched one such joint program with the University of Ibadan – called the UI-Schlumberger Learning Center. All equipment for the center was provided by Schlumberger at a cost of approximately US\$ 8 million (Okafor, 2003). Typically, knowledgeable managers from Schlumberger (the Ambassadors) go to the University center to "Train the Trainers" and by so doing, expertise is passed on.

Note though, that what Schlumberger is doing, as exemplified by the university learning center, is the transfer of technical skill. Moreover, the technical skill is tied to the use of their product. Their actions do not constitute the transfer of technology in a manner that can endanger the company's competitive advantage. Schlumberger's product development centers are all outside Nigeria. From the Nigerian government's point of view, it would be desirable for companies to transfer product development centers to the country but in reality businesses would not do that until they believe it can be carried out in such a manner that it is mutually beneficial and that their technological secrets can be protected.

Our prescription therefore, is that only widely diffused technologies should be transferred. Patented and proprietary technologies are not to be transferred. If the foreign company needs to provide its partners from within the designated affirmative action group with information about proprietary technologies, they should insist on water-tight confidentiality agreements with legally binding "none-use" clauses. Regardless of what we say here, this is already the global practice in the "process engineering" side of the petroleum industry where different solutions providers seek to restrict the amount of knowledge competitors and the public have about exactly how their products work.

Table 6 provides a summary of what the analyses suggest are the best business responses to the different elements of affirmative action laws. Not only do these responses meet the requirements of the laws, they

also enhance the prospect of long term business survivability because of they protect shareholder value as well as engender healthy organizational cultures. The paper now turns to give a few pointers on what to do when a business desirous of making changes in line with our recommendations encounters resistance.

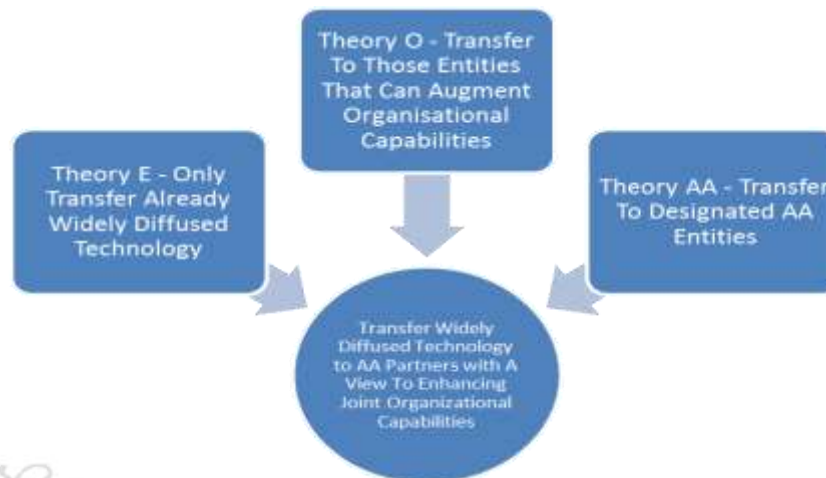


Figure 9: Technology Transfer

Table 6: Best Response To Affirmative Action Laws

Element of Affirmative Action Laws	Best Response To Specific Element Of Affirmative Action Laws
Ownership	Issue Shares at Market Value to Designated Affirmative Action Groups, Employees, & Managers.
Management Control	Employ The Best Managers from the Designated Affirmative Action groups & train them to be even better.
Employment Equity	Layoff Unproductive Workers & Replace them with good workers from the Designated Affirmative Action groups who can then be nurtured.
Skills Development	A Combination of General & Specific Training to The Designated Affirmative Action Groups.
Preferential Procurement	Procure From, and Build Long Term Relationships with Cost Effective Affirmative Action Sources.
Enterprise Development	Develop Affirmative Action Enterprises that are both A Strategic Fit & Enhance Organizational Capability.
Socio-Economic Development Initiatives (SEDI)	Corporate Sponsorship that Benefits the Affirmative Action Groups & Boosts Employee Morale.
Local Fabrication & Production	Fabricate In The Cheapest or Most Convenient Location that Satisfies Affirmative Action Laws.
Technology Transfer	Transfer Widely Diffused Technology to Affirmative Action Partners with A View To Enhancing Joint Organizational Capabilities.

**Resistance to Change**

The change management literature is replete with reasons why change is resisted. Even though there might be some overlap, the information contained therein is inadequate for our purposes because we are dealing

with a specific type of change – that to do with change in compliance with affirmative action laws. From our own observations of companies operating in Nigeria and South Africa, the problem exceeds mere resistance. The actions of managers of business units with regard to affirmative action laws indicate they have a combination of attitudinal and behavioral attributes. We offer the two-dimensional framework in figure 10 to explain this.

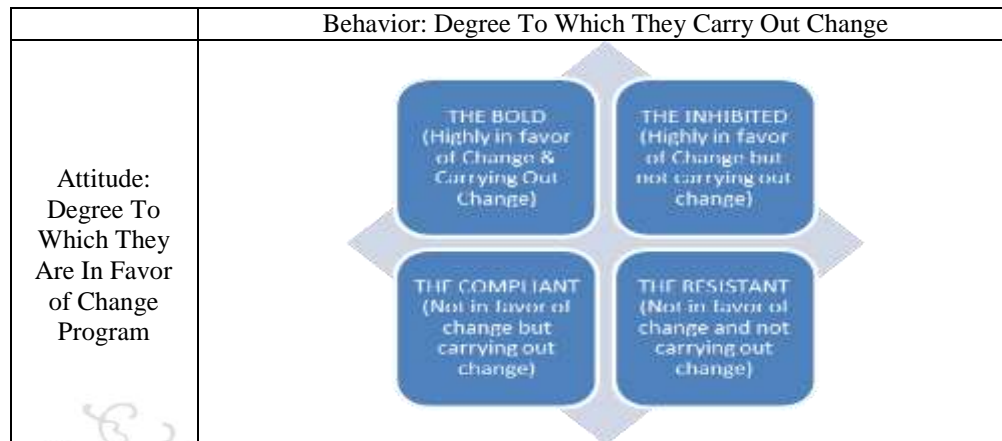


Figure 10: Attitudes & Behavior Matrix

The model embodied in the figure shows that managers have either of two attitudes towards affirmative action laws. They are either highly in favor of it or not in favor. There are also two forms of behavior. They are either carrying out change or they are not. Combining the two attitudes and the two behaviors gives a matrix with four quadrants. Each quadrant represents a different employee type which we discuss presently.

**The Bold**

These individuals are highly in favor of change and are carrying out changes in accordance with the law. There is absolutely no problem with what these people are doing but it would be an error to overlook what we might term their real value. These individuals are bold, and they share the belief in the change mission and have proved it by their actions. It is important that they are placed at the vanguard of the change process and probably form the bulk of what Kotter (1995) calls the “guiding coalition”. This guiding coalition might, for a while, operate outside the normal hierarchy of the company but it is absolutely necessary. Managers who fit within this group and have had success at effectively generating employment diversity or procuring from disadvantaged groups need to have their accomplishments acknowledged in a manner that is visible to others. Acknowledgements with tangible rewards might serve as a motivation for other managers who have not yet jumped on the change bandwagon.

**The Inhibited**

The inhibited constitute a group of employees who are highly in favor of change but are not carrying it out. It is up to senior management to identify this group and decipher what is holding them back. In the case of change towards meeting the goals of affirmative action laws, the inhibitions could be good or bad. Good inhibitions could simply be because the employee does not know how to accomplish the changes. He may not know how or where to find competent companies he can procure from in the emerging market economy. Similarly, he may not know how to recruit good employees in the foreign environment. These are considered good inhibitions because something can be done about them when they are uncovered. An inhibited manager of this sort can be given cross-cultural training to help him relate better to foreigners or

he can be pointed in the right direction regarding how to find good long term suppliers from within the designated affirmative action group.

All obstacles in the path of the inhibited should be eliminated. There is a bigger problem when it comes to the bad inhibitions. Consider a white South African manager who knows that he has to employ more blacks. He is in favor of it, and sympathizes with his country's previously disadvantaged majority. There are clear racial issues involved here, and the emotive nature of it could be an obstacle. Race is a very touchy subject in South Africa. It is never very far from the surface and a lot of wounds have not yet healed. It is possible that such a manager might be inhibited by peer pressure, and adverse influences from within his own racial group. Since certain sections of South African society view affirmative action as reverse discrimination against whites, a white manager may worry about how his hiring blacks or purchasing exclusively from them would make him look in the eyes of other whites. In extreme cases, he may come to be viewed as a traitor by his own kind and maybe face some reprisals that are not visible to his employer. Such bad inhibitions are a clear problem for businesses but they have to tackle them head on. It would be best that THE BOLD individuals who are already carrying out change and are part of the guiding coalition work on such an inhibited individual. They would need to provide him with encouragement and moral support. Senior management would have to use others from within his own racial background who are already carrying out change as examples when coaching him. Ultimately, such individuals are conflicted and deserve some empathy, but they need to be spurred into action quickly. They need to overcome their fears and inhibitions speedily or themselves become casualties of the change process. If such individuals are unable to overcome their inhibitions, they must be replaced.

### **The Compliant**

The Compliant are those who are not in favor of change but are carrying it out none the less. Their behavior cannot be faulted. In practice they are probably carrying out changes because they wish to be on the right side of the law. The problem stems from their attitude. The change process required by law and initiated by senior management is against their instincts. Their hearts and minds are not in what they are doing. They could eventually get frustrated and spoil things.

This group needs to be identified quickly and remedial action taken. The beliefs of individuals would at some point come to be reflected in their actions. Since they are carrying out change in order to abide by the law, they may do other things that are contrary to the spirit of change and that could be counter-productive. Consider for example, our prescription regarding preferential procurement, which says that the optimal change policy is to procure from an entity owned by the designated affirmative action group that you can build a long term supplier-purchaser relationship with. It may well be that a manager among this compliant group is purchasing from a group favored by the affirmative action laws. At some point his ill will towards them would show in his utterances or other signs of disrespect even though he keeps on purchasing from them<sup>17</sup>. The result is that people in the preferred supplier firm start to develop some antipathy towards the purchasing entity with the result that prospects of a meaningful long term relationship are put into jeopardy. The affirmative action laws are in effect forcing THE COMPLIANT to do something against their will and at some point they would snap. Managers who fit into this category must be watched closely in the interim and eventually terminated if they spoil supplier relationships. In any case, they may become unhappy and leave by themselves<sup>18</sup>.

Now, it may be tempting to retain some of the COMPLIANT workers because, they have by their actions proved that they are "top performers". They are obviously very capable individuals and the

<sup>17</sup> A common form of disrespect to suppliers observed in Nigeria is late payments for supplies or services rendered. The indigenous Nigerian contractor could have payments delayed for months while foreign contractors are getting paid.

<sup>18</sup> A good number of white South Africans with managerial experience and expertise have left the country over the last decade.

transformational processes they are implementing may be beneficial to the organization. It is possible that as top performers they may not be certain of how they would fit in after the process of change is completed. If their objection to the change process is based on their own self-interest, then they may be worth retaining. The best way to encourage such people to stay with the corporation over the long term is, as Ross (2006) argued, to give them a clear-eyed view of what they will gain by remaining in the firm. There must be communication and full information about how they will fit into the new order and what the rewards will be. When some of these employees have clarity, they may move from being merely compliant to being active supporters of change.

**The Resistant**

The Resistant comprise a group of individuals who are totally opposed to change and are not carrying out change. Most people’s instincts would lead to the conclusion that this entire group of people must be gotten rid of. In practice, it may not be that easy. Most managers facing such a rebellious group would at least first try to sell the change idea to as many of them as possible. The decision about which one of those in this group should have their employment terminated will therefore depend on their “changeability”. There is another two-dimensional framework given by Bringselius (2010) which we believe can help to subdivide this group further. Although Bringselius does not use this model to discuss affirmative action, we borrow it because it enables us to divide the resistant employees into clearer subsets. The framework is shown in figure 11.

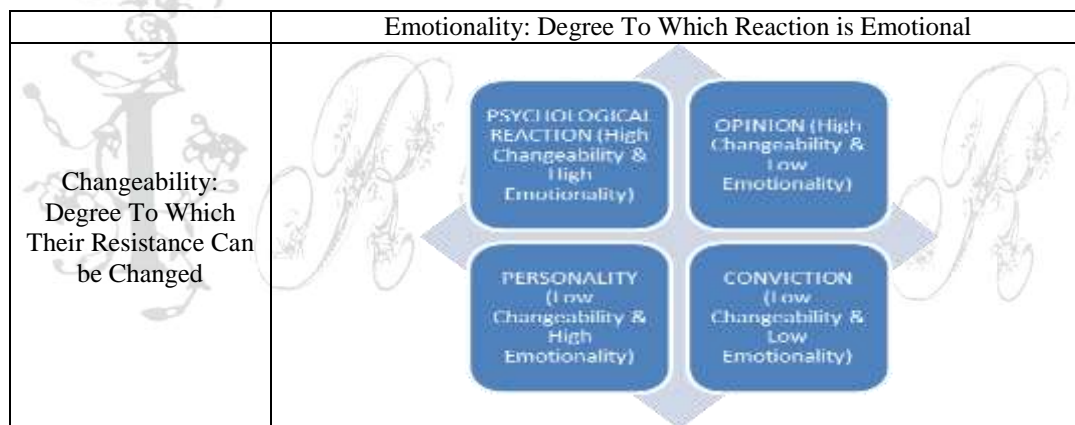


Figure 11: Changeability & Emotionality Matrix

As the figure shows, this model views resistance as a combination of “changeability” and “emotionality”. Changeability refers to the degree to which a resistant individual can be changed. In the two dimensional framework, a resister either has high changeability or low changeability. Emotionality refers to the extent to which an individual’s resistance is the result of an emotional reaction. In this model, emotionality could be either high or low. The interplay between changeability and emotionality gives the four quadrants in the matrix.

The first of these quadrants is that with employees that have highly changeable views and whose opposition to change is an emotional reaction. They are termed as those having a “psychological reaction”. This group of people is only opposed to change because they are emotional. It is instinctive and they have not fully thought through what change implies or means. Their irrationality means that when selling the change program to them, rational messages such as “we have to do it because it is the law” or “we have to do it because it will help us increase sales” will not suffice. Aiken and Keller (2009) posit that when facing such irrational employees, one has to switch to messages that can motivate them. An application of this to



affirmative action is that instead of communicating that compliance with the laws allows the company to make more profit, it may be better to communicate a message that says compliance with the laws builds a better society for everyone concerned. They may be more motivated by the amorphous concept of “society” as opposed to that of “profit”. In addition, such communication could remove from their minds, or at least reduce significantly, the fear that makes them resistant as well as any feeling that they are to be targets (or victims) of change.

The second group is made up of those merely expressing an “Opinion”. They are characterized by high changeability and low emotionality. They are actually rational people who have thought through what the proposed changes mean. Their resistance to change probably reflects concerns about how it is to occur rather than about whether it should occur. In short, they are in favor of the broad strategic idea behind the change policy but opposed to the tactics senior management wishes them to use. This group should be engaged in conversation. A proper two-way exchange may give rise to valuable insights that improve the implementation of the intended change program as well as eliminate the observed resistance from this group. An affirmative action related example could be junior managers being resistant to the idea of sending their workers on a skills development program that has been dictated by senior managers. The junior managers may simply know the training on that program is in some way inadequate and may have an alternative more comprehensive training program in mind. It is only if they are engaged in conversation that such valuable objections can be brought to the surface. In general, it is always best to listen to resisters to understand what underlies their objections. Ford and Ford (2009) regard such feedback from people with deep knowledge of a corporation’s operations as essential to the success of any change program.

When resistance to change stems from “Conviction” it is the result of low emotionality and low changeability. Individuals that fit into this group are not irrational. They have thought through what change means and they simply do not agree with it. Their resistance is characterized by very low changeability. In relation to affirmative action, these individuals have strong beliefs against it. They probably believe affirmative action is wrong, unfair, and constitutes reverse discrimination. There is nothing any one can do about their resistance. These employees are taking a principled stance against affirmative action. The best the corporation can do is to reach a mutually acceptable agreement for such workers to disengage. Such agreement should not be very difficult because the resistant workers are rational people who would know that their positions are untenable. Those employees with strong convictions against change must therefore be let go of. Where it is impossible to reach mutually acceptable agreements for disengagement, the employees have to be sacked outright. If they are not sacked, they would break the law in countries such as Nigeria and South Africa thereby exposing the business to payments of heavy fines or charges of fraud. It is absolutely necessary to sack these workers as soon as they can be classified as having a strong “conviction” against change.

The fourth and final type of change resister is termed the resistant “personality”. Individuals in this group have low changeability and very high emotionality. They are highly irrational people who cannot be changed. Unlike those with conviction who are conscientious objectors, this group is too filled with emotion to reason. These could be very dangerous people and some of them would definitely be racists. It is best to let them go before they do serious damage. In Nigeria, they may fan the flames of dissent and invite the ire of Niger-Delta militants thereby putting more oil industry employees at the risk of kidnap or worse. In South Africa, a number of them may be white supremacists who believe that affirmative action means the blacks are winning the “on-going race war” that they have imagined. The sooner a business gets rid of these employees and creates a large distance between them and itself the better.

Although we have given a framework that categorizes employees into different types based on their degree of affinity towards affirmative action, businesses could face problems regarding how to use the matrices in practice. That is, how do businesses operationalize the framework? It is only possible if the change process involves constant monitoring of individuals and constant communication. An argument can be made that

given the need to classify individuals into these categories, Human Resource departments have to be active and willing participants in any change program. Human Resource departments have to step up their game with regards to profiling employees. Senior and intermediate managers must also get to know their direct reports on an emotional level. Knowing direct reports on the emotional level essentially yields insight into what motivates them and that is really what one needs to tap into when any change program is to be initiated.

## Conclusion

In this paper we have provided an overview of the affirmative action laws that impact business in two emerging market economies: Nigeria and South Africa. In Nigeria, the application of such laws is limited to the oil and gas sector. In South Africa, the laws are more broadly applied. The reason for this difference lies in the history and underlying structure of both countries.

The main objective of this paper was to define how businesses operating in Nigeria and South Africa should react to the affirmative action laws. In order to do this, we viewed affirmative action as an archetype of change (termed "Theory AA"). We reasoned that in order to draw out optimal responses to affirmative action laws, theory AA has to be combined with the more familiar archetypes of change termed "Theory E" and "Theory O". By combining the three theories, we were able to elicit the best responses to affirmative action laws. The best responses are those that satisfy the legal requirements, improve shareholder value, as well as build organizational capabilities and healthy commitment cultures. Our prescriptions are robust and pertain to such common elements of affirmative action laws as ownership, management control, employment equity, and preferential procurement amongst others. What we are suggesting in essence is that change designed merely to meet the requirements of affirmative action laws without any consideration given to organizational capabilities and shareholder value would be sub-optimal and unlikely to prove sustainable.

We have pointed out that even if corporations accept our prescribed responses, they may encounter resistance to change within their own ranks. For this reason, a framework to help manage organizational resistance to change was introduced. Our framework categorizes managerial (and other) employees into groups based on both their attitudes and behaviors in the face of change. The framework is valuable, but in order for it to be operationalized in practice, senior management must communicate a lot more, and be more observant of the attitudes of their direct reports. Change required by affirmative action laws are, unlike other forms of change in the operations of businesses, not optional. They must be carried out to prevent legal penalties. This is the main reason why it must be done. Another reason is that, in regimes where such laws exist, it could become increasingly difficult to operate profitably and sustainably without making the changes. Whatever the reason why a corporation decides to undertake the relevant changes, it is important they are done in the best possible way. We believe that the framework presented in this paper provides at least a first step in that direction.

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