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RACIAL DISCRIMINATION IN THE POLICE SERVICE

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List of Abbreviations:

BEE: Black Economic Empowerment, a (legal) policy of post-apartheid state-backed racial discrimination.

EAP: Economically Active Population, defined by Stats SA as the working age population of employed and unemployed persons, which excludes those who have given up looking for work and those who are otherwise economically disengaged.

EE: Employment Equity, used in reference to Employment Equity plans, which are referred to as EE plans, as prescribed by regulations under the "EEA2" forms.

EEA: Employment Equity Act.

SAPS: South African Police Service.

SCA: Supreme Court of Appeal.

Introduction

This investigation analyses the real-world impact of South Africa's race-based hiring rules on SAPS. It shows how these rules expose South Africans of all races and genders to disadvantage to different degrees at different times, and how they create constantly shifting goalposts for job applicants as well as employees seeking promotion within the organisation.

This report serves as a preliminary description of findings launched to coincide with the deadline for organisations representing 7.5 million workers in the formal sector to submit race-based employment equity plans to the government. The legislation has created a bureaucratic nightmare for private enterprises as well as the state. At the interim stage what is established is the number of persons from all eight official race-gender pairs that are exposed to discrimination under BEE. Moreover, evidence of job policies explicitly stating that persons are refused jobs from all groups is referenced. However, the final report will look at job advertisements, and official rejections based on race to refine the understanding of the number of people from all groups specifically denied work due to BEE.

The big anti-black surprise

The most surprising result of this investigation is that black males are, in absolute terms, at the highest risk of suffering negative discrimination under BEE rules at SAPS. This fact is arresting. The report explains how this came about at SAPS, and what implications it has for policing South Africa, one of the most violent and unsafe peacetime constitutional democracies in the world.

This report also explains what broader implications the experience of anti-black BEE at SAPS has for the broader South African labour force, since the same anti-black BEE rule now applies, as of 1 September 2025, across 7.5 million workers, most of whom are black, and including most of the private sector.

Key Legal Concepts

BEE legally defined goals

BEE is a legal affirmative action system with multiple goals. By law "broad-based black economic empowerment" is defined as including (emphasis added):

(a) increasing the number of black people that manage, own and control enterprises and productive assets;
(b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
(c) human resource and skills development;
achieving equitable representation in all occupational categories and levels in the workforce;

(d) preferential procurement from enterprises that are owned or managed by black people; and
(f) investment in enterprises that are owned or managed by black people;
Insufficient notice is given to the substantial difference between (a) increasing the number of black people that are successful and (d) "achieving equitable representation" everywhere. Both are "BEE".

"Equitable Representation"

The term "equitable representation" refers to many groups, but fundamentally to the ratios of the eight official race-gender pairs[1]. It is "achieved" in BEE terms when the race-gender ratios at a particular occupational category and level match the race-gender ratio in the broader population.

$$\frac{Race-gender\ pair\ in\ Broader\ Population}{Broader\ Population}(\%)=\frac{Race-gender\ pair\ at\ Occupational\ Level}{Total\ Workers\ at\ Occupational\ Level}(\%)$$

As you can see, calculating whether "equitable representation" is in place at a particular salary level of a particular employer requires knowing four numbers, understood as two ratios expressed as percentages. One BEE goal is to get both ratios (%) to match. When these two ratios are equal, then there is what BEE legislation calls "equitable representation".

Hitting these ratios is also a clearly stated goal of the (EEA), which is part of the BEE system of race-based laws. The EEA states its legal purpose as follows (with added emphasis):

> 2(b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce.

Section 15 of the EEA also defines "affirmative action measures" as follows (with added emphasis):

> (1) Affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational levels in the workforce of a designated employer.

There should be no doubt that "equal opportunity" and hitting race-gender ratios are not the same thing. But if there were any doubt, the fact that "equitable representation" and "equal employment opportunities" are referred to separately in the EEA is a clear, and legally significant admission that they are not the same thing[2].

The "broader population" is a vague term that applies to different groups in law. It generally refers to all people of working age that are either employed, or unemployed. As such it excludes children, the elderly, and people of working age who have given up looking for work. However, in some instances the "broader population" will not refer to the national workforce, but rather to a geographically defined subset of that workforce. This could be a province, city, town, suburb, or other subset.

48-element matrix

There are 8 race-gender pairs and 6 occupational levels in the permanent workforce, making a 48-element matrix. To achieve "equitable representation" requires matching race-gender ratios at an employer with race-gender ratios in the broader population across all 48 elements.

	Male				Female			
Occupational Levels	A	C	I	W	A	C	I	W
Top management								
Senior management								
Mid-management								
Skilled technical								
Semi-skilled								
Unskilled								
TOTAL PERMANENT								

(Note the official labels for the occupational levels have been abbreviated. The race group labels follow official government terminology: A = African (black), C = Coloured, I = Indian, W = White.)

Barnard principle

When "equitable representation" does not occur the "Barnard principle" is applicable. The Constitutional Court defined the "Barnard principle" as follows: an employer may refuse to hire someone, even though they are by far the best candidate on merit, because their race-gender pair is "over-represented" or at "equitable representation" at the occupational level where the relevant job is on offer.

In other words, someone can be denied a specific job because of their race-gender pair to pursue the "equitable representation" of all groups.

Black victims of the Barnard Principle

One question that the Constitutional Court addressed is whether black people can be victims of the BEE "representivity" rule if there is "over-representation" in black race-gender pairs. The Constitutional Court responded with an unambiguous *yes*.

The judgment, written by former Chief Justice Raymond Zondo, noted the question, *"May the Barnard principle be applied against a black candidate?"*

It answered:

[...] the application of the *Barnard* principle is not limited to White candidates. Black candidates, whether they are African people, Coloured people or Indian people are also subject to the Barnard principle. Indeed, both men and women are also subject to that principle.[3]

Naidoo principle

The "Naidoo principle" applies where the "ideal target" of a particular race-gender pair is "zero".[4] This means that even when there are zero people of a specific race-gender pair in a given occupational level, their race-gender pair can still be considered to be at "equitable representation", allowing the state to refuse to appoint the best candidate because of their race and gender. It means that the Barnard principle applies even at the extreme where its effect is to ban anyone from a particular race-gender pair to work in an occupational level for so long as the "ideal target" remains "zero".

Barnard Circumstances

A person is in a "Barnard circumstance" if the Barnard principle could be applied against them if they sought promotion. That occurs if the occupational tier above them has or exceeds BEE "equitable representation" in the relevant race-gender pair.

For example, if there are 200 coloured female police officers at one occupational level, and at the next occupational level up coloured females are at, or in excess of BEE "equitable representation", then there are 200 coloured female police officers in "Barnard circumstances".

That does not mean that any of those police officers have applied for promotion and been rejected due to BEE. It means that under the EEA their employer would be justified in rejecting any, or all of them, even if any, or all, were the best available candidates for promotion. Furthermore, the employer is required to reject even the best candidates unless extraordinary mitigating circumstances can be proved.

Naidoo Circumstances

The number of people in "Naidoo circumstances" are calculated in a similar way to those in "Barnard circumstances". The difference is that to be in "Naidoo circumstances" a candidate must be below a tier in which the "ideal target" for their race-gender pair is "zero". In other words, BEE "equitable representation" occurs, or is exceeded, by the absence of anyone from that race-gender pair at that level of the organisation.

Data: Why focus on SAPS?

SAPS has been at the cutting edge of BEE since its inception. That is understandable, given the legacy of apartheid. It also explains why SAPS is the most important organisation to look at to understand what precedents have been set in law, and what experience teaches, regarding the BEE "representivity" rule.

Transition from Apartheid

From the Union of South Africa in 1910 until the first non-racial elections in 1994 the South African police defended white supremacist rule and enforced white supremacist laws. However, in their brutality the police often did not stick to the laws of white supremacy, but exceeded them. The laws of apartheid were repeatedly, systematically broken in order violently assert white domination. Notoriously, police murdered innocent black children, and others, during the riots of 1976. No one was held accountable. The lack of accountability is what makes the murder systemic, rather than idiosyncratic.

To be clear, many police officers, and many of the laws they enforced, were decent.[5] Moreover, those police officers that abused their powers to protect white supremacism were not all white. Both are points of nuance that undermine the overly reductive notion that the South African police force was a purely evil, white supremacist organisation.

With those qualifications in mind, SAPS officers committed unaccounted for acts of murder, and other crimes against humanity, and it was still obvious to almost everyone in the 1990s that the police needed to be profoundly reformed in order to gain trust, legitimacy, and effectiveness in the rainbow republic. Again, it was obvious to almost everyone that this process would require affirmative action, i.e. deliberately accelerating the promotion of previously oppressed groups, including black, coloured, and Indian people, as well as women.

However, from the very beginning SAPS aimed at more than just affirmative action in the traditional sense of accelerating the promotion of promising black officers. It also aimed at "equitable representation".

First EE Plans at SAPS

According to court records (with added emphasis):

"On 27 June 1997, an affirmative action policy for SAPS had been agreed upon in the Safety and Security Sectorial Bargaining Council…It reads as follows:

'In order to manifest commitment to this policy and constitutional responsibility, the South African Police Service shall strive to reflect the demographics of the country in all occupational classes and at all levels of the organisation at national and provincial levels, in terms of race and gender. Persons with disabilities shall be accommodated in terms of their abilities, and the nature of services rendered by the Service.

To this end, certain mechanisms are required, of which the most important is the setting of attainable goals for the organisation which, in turn, will reflect the minimum requirement for representivity set by the Government.

Therefore, the Service shall strive to attain a minimum fifty (50) percent Black people at management level by the year 2000. During the same period, women shall comprise at least thirty (30) percent at middle and senior management levels.

Within ten (10) years, people with disabilities shall comprise at least two (2) percent of the Service. In order to meet the objectives of this document, the Service shall strive to attain representativeness which reflects the population distribution based upon the 1996 National Populations Census, by the year 2005.'

In short, SAPS was supposed to achieve "equitable representivity" by 2005.

In 2001, SAPS adopted an EE Plan that aimed to achieve "equitable representivity" through stipulated targets for discrimination by race. As the Constitutional Court noted:

> The targets are split into "ideal" and "realistic". The ideal targets hope for 90% of appointments to be made from designated groups [all eight race-gender pairs except white males]. In respect to middle management positions (salary levels 8 to 12) the realistic targets comprise appointments of 75% from designated groups. It follows that the ideal target for non-designated groups is 10% and the realistic target is 25% of appointments.

Furthermore, the EE Plan "had set itself the goal of achieving employment equity targets agreed upon by the year 2004", which it failed to do.

In 2004, the National Commissioner of the Police, Jackie Selebi (subsequently disgraced), issued a National Instruction on the application of the EE Plan. This required all hiring decisions to consider race-gender "representivity", and stated that the Commissioner might elect to leave a post empty, and re-advertise it, if the requirements were not met.

Selebi then used that EE Plan to apply the "Barnard principle" against then-captain Renata Barnard.

Pro-white BEE at SAPS

Likewise, BEE has been explicitly pro-white.

In 2015, the SAPS EEP stated the following:

From the above table it is evident that there is a desperate shortage of Whites and Indians on Constable level. What is further concerning is to note that 63.3% of all Whites on Junior Management Level…are 45 years or older…Natural attrition will therefore create a problem of representivity on Production Level, Junior Management Level, and Middle Management if targetted recruitment is not prioritized in the future. Career Centres must…increase the awareness of targetted groups…to entice these groups to apply for vacant posts on entry level.

In short, the EE Plan required actively boosting chances for white and Indian people under the BEE "representivity" rule due to address "a desperate shortage of Whites and Indians".

Data: BEE at SAPS

Here is a snapshot of the current workforce at SAPS, as of 2024. For orientation of the table it is helpful to note that in "top management" there are 27 positions. 26 are held by black persons, one by a coloured male, and zero by the other five race-gender pairs. This is a clear failure to "achieve equitable representation".

	Male				Female				
Occupational Levels	A	C	I	W	A	C	I	W	Total
Top management	13	1	0	0	13	0	0	0	27
Senior management	309	53	40	74	218	32	15	38	779
Mid-management	2984	442	275	911	2127	271	154	624	7788
Skilled technical	48744	7113	1635	5901	24107	3156	666	3729	95051
Semi-skilled	31738	4509	771	572	28274	3488	432	831	70615
Unskilled	4029	890	118	36	4568	861	38	21	10561
TOTAL PERMANENT	87817	13008	2839	7494	59307	7808	1305	5243	184821
Temporary employees	9	1	0	0	8	0	0	0	18
GRAND TOTAL	87826	13009	2839	7494	59315	7808	1305	5243	184839

Table: 2024 Workforce Profile

Every year SAPS must publish a new EE Plan with "Numerical Targets" in the 64-element matrix noted above. The 2024 plan is as follows:

	Male				Female				
Occupational Levels	A	C	I	W	A	C	I	W	Total
Top management	12	1	1	1	10	0	1	0	26
Senior management	387	42	16	46	315	36	10	35	887
Mid-management	4173	459	171	488	3400	391	95	373	9550
Skilled technical	39996	4394	1647	4668	32583	3752	916	3570	91526
Semi-skilled	30025	3298	1236	3504	24461	2818	687	2680	68709
Unskilled	2259	248	93	264	1840	212	52	202	5170
TOTAL PERMANENT	76852	8442	3164	8971	62609	7209	1761	6860	175868

Table: Numerical Targets 2024

Whenever the ratios are equal at an element there is “equitable representation”. If the general population ratio is higher, then that race-gender pair is “under-represented” for that element in the BEE matrix. If the race-gender pair ratio is higher, then it is “over-represented” in the BEE matrix. To calculate the extent of over- or under-representation according to the BEE matrix requires subtracting the target ratio from the workforce profile snapshot.

	Male				Female				
Occupational Levels	A	C	I	W	A	C	I	W	Total
Top management	1	0	-1	-1	3	0	-1	0	1
Senior management	-78	11	24	28	-97	-4	5	3	-108
Mid-management	-1189	-17	104	423	-1273	-120	59	251	-1762
Skilled technical	8748	2719	-12	1233	-8476	-596	-250	159	3525
Semi-skilled	1713	1211	-465	-2932	3813	670	-255	-1849	1906
Unskilled	1770	642	25	-228	2728	649	-14	-181	5391
TOTAL PERMANENT	10965	4566	-325	-1477	-3302	599	-456	-1617	8953

Table: BEE Matrix subtraction of “Numerical Targets” from “Workforce Profile”, 2024.

First, look at the purple squares: this table shows that there are only three elements at “equitable representation”, where the difference between “target” and reality is zero. In one of those elements, coloured male, there is a “target” of 1, and an “achievement” of 1. In the other two cases, coloured female and white female, the “target” is zero and the “achievement” is zero. (It is not clear why the target for Indian females is 1, while that of coloured and white females is zero).

Blocks coloured in purple are at the “right” level, meaning that any new appointments at that level – to replace exiting employees – must be on a like-for-like basis, meaning a person from the same race group and gender.

Next, consider the blocks coloured in red. These represent job roles that can be blocked against applicants from that race-gender pair. Under EEA legislation that blockage is a default that can only be overcome in exceptional circumstances.

Finally, blocks left uncoloured represent job roles where new candidates from that race group and gender may be appointed in the numbers indicated.

At top management, skilled, semi-skilled, and unskilled levels the overall target is less than the current workforce profile, meaning SAPS is looking to downsize. However, the pressures to downsize do not fall on all races equally. For example, at top management black males and females are “over-represented”, meaning black people seeking promotion into top posts should be rejected under the BEE “Barnard principle” targets.

White and Indian males, and Indian females, by contrast, stand to benefit from BEE at top management level at SAPS, even while downsizing occurs.

The largest amount of "over-representation" in any element is at black male skilled officers. The current number of such officers is almost 9,000 higher than the target. Black males seeking promotion into that level are in the Barnard circumstance where promotion can be denied to black males who are the best candidates due to BEE.

Following Precedent

The method of calculating Barnard circumstances is drawn directly from court records. The following is grabbed from the SCA judgment in Barnard.

> It was agreed between the parties that the table set out hereafter correctly sets out the SAPS employment equity targets and the race and gender representivity levels at levels nine and ten:

	A/M	A/F	I/M	I/F	C/M	C/F	W/M	W/F	Disabled	Vacant Posts (REP)	TOTAL
Current	6	6	1	0	1	1	8	6			29
EE Target	13.9	9.2	0.5	0.4	1.6	1.1	2.0	1.3	0.6	1	
Over/Under Representation	-8	-3	0	-0	-1	-0	6	5	-1		
Suggested allocation	1										

Redacted screengrab: paragraph 34, SCA judgment, Barnard v SAPS.

Equitable Representation is a Barnard Circumstance

It is important to note that even where "equitable representation" has been "achieved" precisely, that means no new hires can be made at that level for the specific race-gender pair. Once "equitable representation" has been achieved there are only four ways a new hire can be made in that race-gender pair at that particular occupational level.

1) Proportional new hires are made across the board for all eight race-gender pairs.
2) Someone leaves a position from the relevant race-gender pair, dropping it below "equitable representation", and allowing a one-for-one replacement.
3) So many new hires are made in other race-gender pairs that the particular race-gender pair in question drops below "equitable representation".
4) The ratios to determine "equitable representation" are changed. This could happen by setting new targets, or shifting the baseline definition of "broader population", or due to demographic changes.

That means a candidate for a single advertised post is in the Barnard circumstance when the position they are applying to is already at target. This is closely related to the "Naidoo principle" which established in law that hiring a single Indian Female can be blocked, because SAPS is already at target at zero.

2024 in Overview and Detail

A simplified table shows where elements are in the Barnard circumstance (BC), and where they are under target (UT), according to SAPS's 2024 report.

	BM	CM	IM	WM	BF	CF	IF	WF
Top M	BC	BC	UT	UT	BC	BC	UT	BC
Senior	UT	BC	BC	BC	UT	UT	BC	BC
Mid-M	UT	UT	BC	BC	UT	UT	BC	BC
Skilled	BC	BC	UT	BC	UT	UT	UT	BC
Semi-	BC	BC	UT	UT	BC	BC	UT	UT
Unskilled	BC	BC	BC	UT	BC	BC	UT	UT

Table: Barnard circumstance vs Under-target elements, 2024

Now it is possible to roughly calculate the number of people in Barnard Circumstances, 2024. For any element that is BC go one step down and record that number. Sum all recorded numbers. The reasoning is as follows: if an element X is BC, then the officers in the same race-gender pair who are one tier down on the occupational ladder are in Barnard circumstances in relation to jobs they may seek in that element X.

For example, take the first element to be X: black male top managers. This element is BC. That means black males one level down – in senior management – face Barnard circumstances if they apply to be promoted to X, top management roles. There are 309 black male senior managers in that situation. Here is a table that records all, and only, officers in Barnard circumstances, starting with 309 black male senior managers.

	Male				Female				
Occupational Levels	A	C	I	W	A	C	I	W	Total
Senior management	309	53	0	0	218	32	0	38	650
Mid-management	0	442	275	911	0	0	154	624	2406
Skilled technical	0	0	1635	5901	0	0	666	3729	11931
Semi-skilled	31738	4509	0	572	0	0	0	831	37650
Unskilled	4029	890	0	0	4568	861	0	0	10348
TOTAL	36076	5894	1910	7384	4786	893	820	5222	62985

Table: Barnard circumstances total permanent workforce 2024.

This form of estimating the number of people in Barnard circumstances comes with a note of caution. There are 16 salary bands at SAPS and only 6 occupational tiers defined in the EEA Regulations. That means some occupational tiers have more than one salary band. Returning to the example of 309 black male senior managers, those managers occupy three salary bands and are within an element that is UT (under-target). That means black males at the lower two salary bands of the senior manager tier can be promoted. However, if any of the 309 seek promotion into top management, then the Barnard principle applies against them.

That means for those already at the highest point of senior management, the Barnard principle applies immediately upon seeking promotion; while for those at the two lower notches of senior management the Barnard principle applies more remotely. But it applies to all.

The method used is almost certainly an underestimate. That is because it does not count officers at an occupational level as being blocked from promotion within salary bands at that level for a corollary reason. Therefore, it counts no one from top management, nor any would be recruits as being in Barnard circumstances, even though there are clearly people in both categories against whom the Barnard principle is applicable.

Still, the under-count reveals dramatic results.

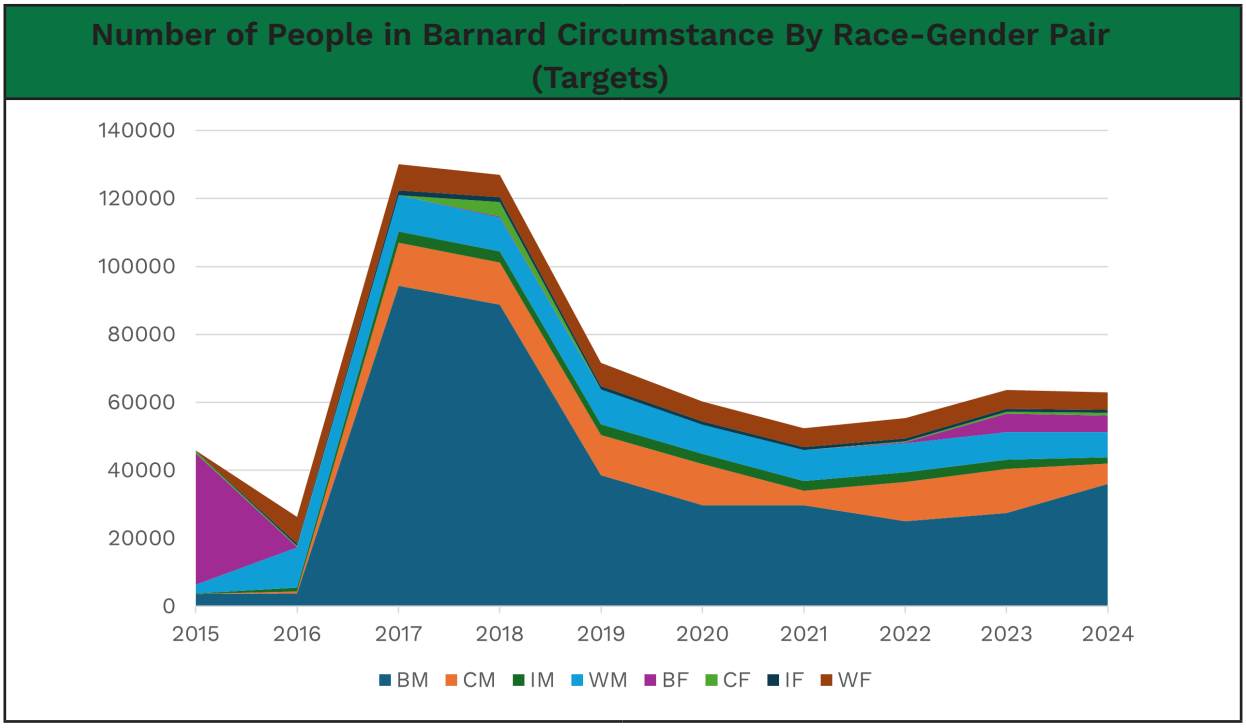
In the forthcoming report all workforce profiles for all 16 salary bands across SAPS will be calculated to produce a more fine-grained account.

For now, the total number of people in “Barnard circumstances” according to “targets” by year using the method described above is as follows:

	BM	CM	IM	WM	BF	CF	IF	WF	TOTAL
2015	3658	55	99	2515	38711	518	150	72	45778
2016	3751	563	1228	11759	207	286	694	7882	26370
2017	94324	12665	3339	10638	0	0	1468	7713	130147
2018	88753	12440	3192	10022	229	4313	1444	6606	126999
2019	38621	11777	3147	10268	0	28	921	6947	71709
2020	29758	12036	3090	8532	0	0	922	5865	60203
2021	29754	4234	2944	9078	0	0	886	5487	52383
2022	24965	11644	2831	8607	225	299	897	5862	55330
2023	27502	12929	2760	8001	5423	600	864	5538	63617
2024	36076	5894	1910	7384	4786	893	820	5222	62985

Table: Barnard circumstances by race-gender and year.

This is shocking on multiple levels. One thing to note is that the overall number of persons facing Barnard circumstances varied widely until 2019, after which it has settled between 62,000 and 72,000. That is an extremely high number of people facing Barnard circumstances out of a workforce of roughly 185,000.



Graph: Barnard circumstances by race-gender pair and year.

Amazingly, even though black people were systematically oppressed by the fascist, white supremacist apartheid state more severely than any other race group, most people in Barnard circumstances at SAPS are black.

Changing Targets since 2015

Targets have changed, sometimes dramatically, over the years. Sometimes, the changes are so dramatic that they are most likely typos, or clerical errors.[6]

However, there is clear and ongoing tinkering with targets by EEA implementers at SAPS, as shown in the table below.

Year	Level	BM	CM	IM	WM	BF	CF	IF	WF
2016	Top	8.1%	-3.5%	-3.2%	-0.3%	2.8%	-3.5%	0.0%	-0.3%
2016	Snr	-0.2%	-1.4%	0.1%	-1.9%	3.0%	0.3%	0.2%	-0.1%
2016	Mid	2.4%	0.4%	-0.3%	-1.9%	-0.2%	0.1%	0.1%	-0.5%
2016	Skill	-0.3%	0.3%	0.0%	-0.5%	0.8%	0.0%	0.0%	-0.3%
2016	Semi-S	-1.2%	-3.2%	0.4%	0.2%	0.8%	0.0%	0.0%	-0.1%
2016	Un-S	-4.3%	-5.5%	-0.8%	-0.5%	11.0%	-0.2%	0.0%	0.2%
2016	Total	-0.9%	-0.1%	-0.2%	-1.3%	3.1%	0.2%	0.0%	-0.7%
2017	Top	-2.8%	-0.2%	0.0%	-0.2%	0.7%	2.6%	2.8%	-2.9%
2017	Snr	-0.9%	-1.2%	-1.3%	-0.7%	2.9%	0.6%	-0.4%	0.9%
2017	Mid	0.0%	-0.3%	-1.2%	-0.4%	2.2%	0.2%	-0.5%	0.1%
2017	Skill	-1.5%	-1.6%	-0.5%	0.0%	4.4%	0.1%	-0.2%	-0.8%
2017	Semi-S	-2.2%	-0.1%	0.5%	0.7%	0.4%	0.3%	0.3%	0.2%
2017	Un-S	6.9%	1.1%	0.8%	0.0%	-7.8%	-1.3%	0.4%	0.0%
2017	Total	-1.5%	-0.6%	0.0%	0.4%	1.8%	0.1%	0.0%	-0.2%
2018	Top	-5.6%	2.8%	2.8%			-5.6%	0.0%	2.8%
2018	Snr	-1.4%	-1.0%	-2.2%	-1.9%	4.7%	0.9%	-0.1%	1.0%
2018	Mid	-0.2%	-0.2%	-1.3%	-1.0%	2.9%	0.2%	-0.5%	0.1%
2018	Skill	-2.1%	-1.4%	-0.4%	0.6%	3.8%	0.2%	-0.2%	-0.6%
2018	Semi-S	-2.0%	0.0%	0.4%	0.8%	0.3%	0.1%	0.2%	0.2%
2018	Un-S	-5.8%	-1.8%	0.6%	-0.1%	5.5%	0.7%	0.7%	0.1%
2018	Total	-2.1%	-0.7%	0.0%	0.4%	2.2%	0.2%	0.1%	-0.2%
2019	Top	9.7%	-0.2%	-0.1%			2.7%	-2.8%	-0.1%
2019	Snr	4.5%	1.9%	3.2%	1.3%	-7.4%	-1.7%	0.4%	-2.3%
2019	Mid	1.0%	0.2%	2.0%	-1.7%	-1.2%	-0.1%	0.9%	-1.1%
2019	Skill	1.8%	2.0%	0.5%	-3.2%	-1.7%	0.1%	0.4%	0.2%
2019	Semi-S	2.4%	-0.1%	-0.8%	-0.8%	0.0%	-0.2%	-0.4%	-0.1%
2019	Un-S	4.1%	1.4%	-0.6%	0.9%	-4.4%	-0.6%	-1.0%	0.2%
2019	Total	2.3%	0.9%	-0.1%	-1.3%	-1.7%	-0.2%	-0.1%	0.2%
2020	Top	-2.7%	0.0%	0.0%	2.7%	0.0%	0.0%	0.0%	0.0%
2020	Snr	0.6%	-0.3%	-0.8%	-1.4%	1.9%	0.2%	0.0%	-0.4%
2020	Mid	0.5%	-0.1%	-0.5%	-2.1%	3.1%	0.2%	-0.1%	-1.0%
2020	Skill	-1.7%	-0.6%	-0.2%	-1.2%	3.9%	0.3%	0.0%	-0.5%
2020	Semi-S	-1.0%	-0.1%	0.2%	0.8%	-0.4%	-0.1%	0.1%	0.5%
2020	Un-S	-0.3%	0.0%	0.1%	0.6%	-1.1%	0.0%	0.1%	0.5%
2020	Total	-1.2%	-0.3%	0.0%	-0.1%	1.5%	0.1%	0.1%	0.0%
2021	Top	-2.7%	0.0%	0.0%	0.0%	2.7%	0.0%	0.0%	0.0%
2021	Snr	0.6%	-0.3%	-0.7%	-1.3%	1.8%	0.2%	0.0%	-0.3%
2021	Mid	0.5%	-0.1%	-0.5%	-2.0%	2.9%	0.2%	-0.1%	-0.9%
2021	Skill	-1.6%	-0.6%	-0.2%	-1.1%	3.7%	0.3%	0.0%	-0.5%
2021	Semi-S	-1.1%	-0.1%	0.2%	0.9%	-0.4%	-0.1%	0.1%	0.5%
2021	Un-S	-0.4%	-0.1%	0.1%	0.8%	-1.3%	0.0%	0.2%	0.7%
2021	Total	-1.2%	-0.3%	0.0%	-0.1%	1.5%	0.1%	0.1%	0.0%
2022	Top	0.2%	-1.6%	1.1%	-1.6%	3.3%	-2.7%	3.8%	-2.7%

2022	Snr	-0.7%	0.2%	1.4%	0.9%	-1.3%	-0.3%	0.2%	-0.4%
2022	Mid	-1.2%	0.1%	0.5%	1.7%	-2.3%	-0.2%	0.3%	1.2%
2022	Skill	3.7%	0.5%	-0.1%	-0.3%	-2.6%	-0.5%	-0.2%	-0.5%
2022	Semi-S	-1.4%	0.2%	0.0%	-1.0%	2.6%	0.4%	-0.1%	-0.6%
2022	Un-S	-4.3%	-0.5%	-0.6%	-0.8%	6.1%	0.6%	-0.1%	-0.5%
2022	Total	1.3%	0.4%	0.0%	-0.2%	-0.9%	-0.1%	-0.1%	-0.3%
2023	Top	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
2023	Snr	1.5%	-0.6%	-1.4%	-1.8%	2.5%	0.2%	-0.2%	-0.2%
2023	Mid	1.8%	-0.3%	-0.7%	-2.8%	4.1%	-0.1%	-0.3%	-1.5%
2023	Skill	-2.8%	-1.0%	-0.1%	-0.9%	4.6%	0.3%	0.1%	-0.2%
2023	Semi-S	0.1%	-0.4%	0.3%	1.4%	-1.9%	-0.4%	0.1%	0.8%
2023	Un-S	2.1%	0.0%	0.6%	1.6%	-5.2%	-0.4%	0.3%	1.2%
2024	Total	-1.3%	-0.7%	0.0%	0.0%	1.8%	0.0%	0.1%	0.1%
2024	Top	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
2024	Snr	1.5%	-0.6%	-1.2%	-1.7%	2.3%	0.1%	-0.1%	-0.3%
2024	Mid	1.3%	-0.3%	-0.6%	-2.5%	3.4%	0.5%	-0.3%	-1.4%
2024	Skill	-2.9%	-1.0%	-0.1%	-0.9%	4.7%	0.4%	0.1%	-0.2%
2024	Semi-S	0.1%	-0.4%	0.3%	1.4%	-1.9%	-0.4%	0.1%	0.8%
2024	Un-S	2.1%	0.0%	0.6%	1.6%	-5.3%	-0.5%	0.3%	1.3%
2024	Total	-1.4%	-0.7%	0.0%	0.0%	1.8%	0.0%	0.1%	0.1%

Table: Changes in Numerical Targets over time

Top Managers over time

The vast majority of top managers (76%) at SAPS have been black since 2015. However, black males and females were under target, according to the EE Plan of 2015. All other groups were on target, meaning Barnard circumstances applied. Despite black people being 76% of top managers, BEE required that only black managers could be promoted in accordance with the "representivity" rule.

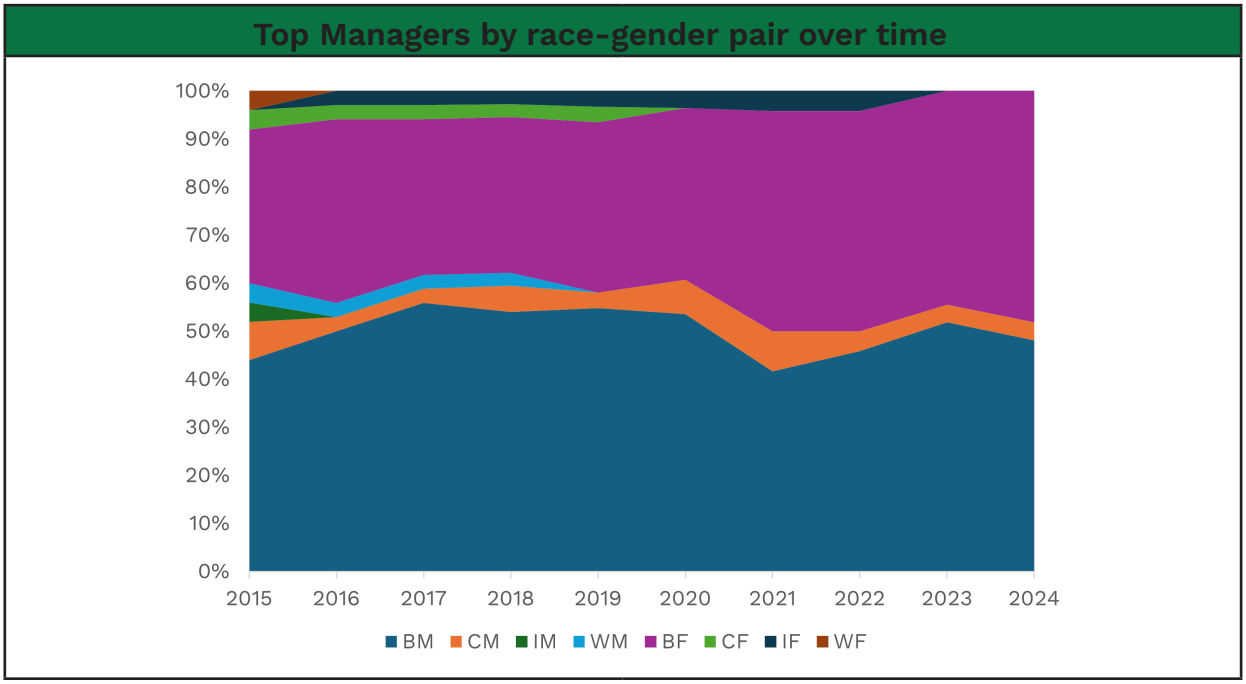
By the end of 2015 the single Indian male and single white female left. The target for Indian males was accordingly adjusted down to zero in 2016. The target for white females was adjusted down to zero in 2017.

The single white male and single coloured female departed in 2018 and 2019 respectively. The target for white men came down to 1 and settled there, while the target for coloured females was brought down to zero by 2022, where it has remained ever since.

This table shows the composition by race-gender pairs of top managers.

	BM	CM	IM	WM	BF	CF	IF	WF
2015	11	2	1	1	8	1	0	1
2016	17	1	0	1	13	1	1	0
2017	19	1	0	1	11	1	1	0
2018	20	2	0	1	12	1	1	0
2019	17	1	0	0	11	1	1	0
2020	15	2	0	0	10	0	1	0
2021	10	2	0	0	11	0	1	0
2022	11	1	0	0	11	0	1	0
2023	14	1	0	0	12	0	0	0
2024	13	1	0	0	13	0	0	0

Table: Top managers by race-gender pair over time



Graph: Top Managers by race-gender pair over time

One key point to note is that while black males have been "over-represented" relative to the broader population, EAP, for every year since 2015, and black females have been "over-represented" relative to EAP for every year since 2019, there is no relenting on the BEE "representivity" rule.

Significantly, black males and females are currently in Barnard circumstances at top management level. That means promotions of black males and females can and ought legally to be blocked according to the Barnard principle, even if that means leaving posts vacant instead, in order to achieve full "equitable representation".

This particularly affects senior managers who are looking to rise in the ranks to top management.

Senior Managers over time

The picture of senior managers is similar to that of top managers. Black male managers are the plurality race-gender pair, at 40%, which is below EAP. Black females are next at 28%. This is not a very large change, as black males were 38% and black females were 25% of senior managers in 2015. White males are down from 14% to 9%.

	BM	CM	IM	WM	BF	CF	IF	WF
2015	273	55	34	102	175	23	9	43
2016	294	52	40	97	207	28	10	45
2017	360	60	48	112	236	30	11	54
2018	343	57	46	103	229	29	11	51
2019	340	52	47	96	230	28	12	51
2020	301	46	42	82	220	26	13	44
2021	280	47	42	78	202	26	11	34
2022	288	46	43	79	225	30	12	37
2023	300	50	43	81	228	32	15	37
2024	309	53	40	74	218	32	15	38

Table: Senior managers by race-gender pair over time

By looking at the relation between targets and current race-gender ratios at top management position it is possible to see which senior managers have an open road to promotion, and who faces the prospect of rejection due to the Barnard principle.

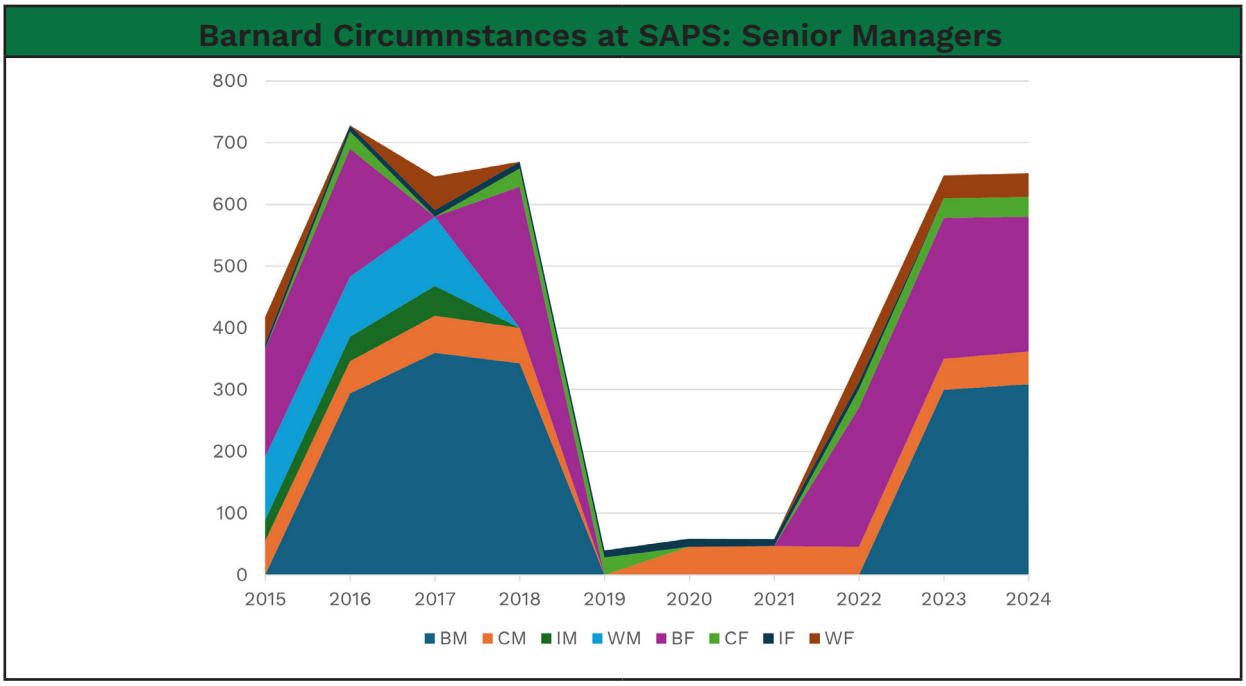
	BM	CM	IM	WM	BF	CF	IF	WF
2015	0	55	34	102	175	0	9	43
2016	294	52	40	97	207	28	10	0
2017	360	60	48	112	0	0	11	54
2018	343	57	0	0	229	29	11	0
2019	0	0	0	0	0	28	12	0
2020	0	46	0	0	0	0	13	0
2021	0	47	0	0	0	0	11	0
2022	0	46	0	0	225	30	12	37
2023	300	50	0	0	228	32	0	37
2024	309	53	0	0	218	32	0	38

Table: Senior managers in Barnard circumstances by race-gender pair

The table above is not what any layperson would have expected. White males were most of those in Barnard circumstances in 2015 – 2017. However, there are no senior management white males in Barnard circumstances now, since white men are under target at top management level.

By contrast black men are currently 48% of senior managers in Barnard circumstances. Black females are 34% of those in Barnard circumstances. 527 black senior officers face the prospect of being rejected because they are black should they seek promotion to top management positions, due to BEE.

If one looks at the graph over time, another dynamic is also revealed.



Graph: Senior managers in Barnard circumstances over time

While the numbers of senior management officers in each race-gender pair has been stable, the number facing Barnard circumstances has varied dramatically due to shifts in targets. In particular, in 2021 the target for black female top managers was 13, but in 2022 that target came down to 10. Although the number of black females in top management remained constant (11), this shift in targets meant that 225 black female senior managers were suddenly placed in Barnard circumstances, where their promotion could be denied under the Barnard principle.

The overall result is that many officers face career threats due to BEE, and most are black.

Middle Managers over time

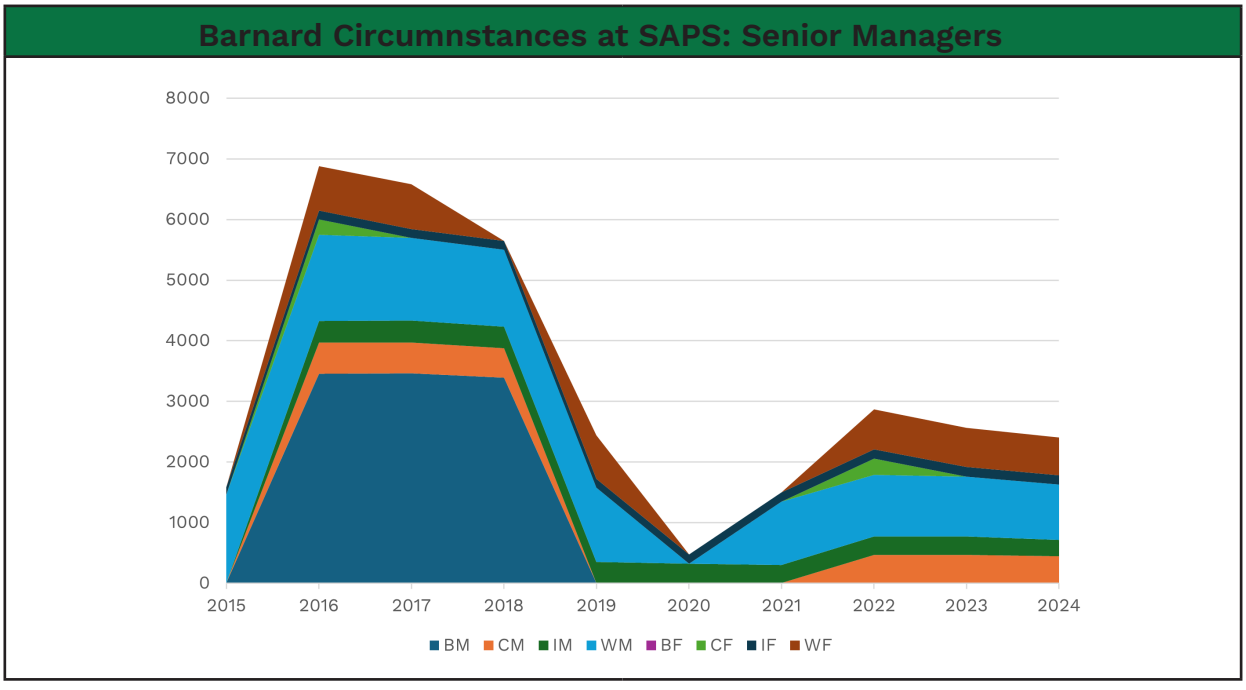
The same general dynamics are in play, so it is possible to move right to the table of officers in Barnard circumstances.

	BM	CM	IM	WM	BF	CF	IF	WF
2015	0	0	0	1461	0	0	126	0
2016	3457	511	360	1417	0	258	143	730
2017	3463	504	365	1366	0	0	145	736
2018	3393	486	352	1268	0	0	144	0
2019	0	0	350	1226	0	0	146	716
2020	0	0	322	0	0	0	153	0
2021	0	0	297	1047	0	0	151	0
2022	0	470	299	1019	0	269	149	665
2023	0	470	301	988	0	0	157	649
2024	0	442	275	911	0	0	154	624

Table: Middle managers in Barnard circumstances by race-gender pair over time

Although the overall forces are the same, the results are different at middle-management level. There are currently zero black people in Barnard circumstances, which has been the case since 2019. There have never been black females in Barnard circumstances at this level.

On the other hand, Indian females have been always been in Barnard circumstances, and Indian males have been in this predicament since 2015.



Graph: Middle managers in Barnard circumstances over time

In 2015 only white men and white women were in Barnard circumstances. But then targets were revised downwards for all other groups. For example, the target for coloured men changed from 60 (8%) in 2015 to 49 (7%) in 2016. Between 2016 and 2018 black males were at the greatest risk from the Barnard principle. Then the targets were shifted again. This time black male targets shifted from 35% to 40% in a year, and from 305 to 387 in a few years, to relieve the pressure.

Black females have never been in Barnard circumstances at this level, and black males have been spared this obstacle since the 2019 target shift, and coloured females are currently also spared. All other groups are in Barnard circumstances.

Skilled Officers over time

There are more surprises as one moves to the numerically bigger groups. Skilled officers are the largest group, with 95,051 officers at this level alone, which is more than half the force.

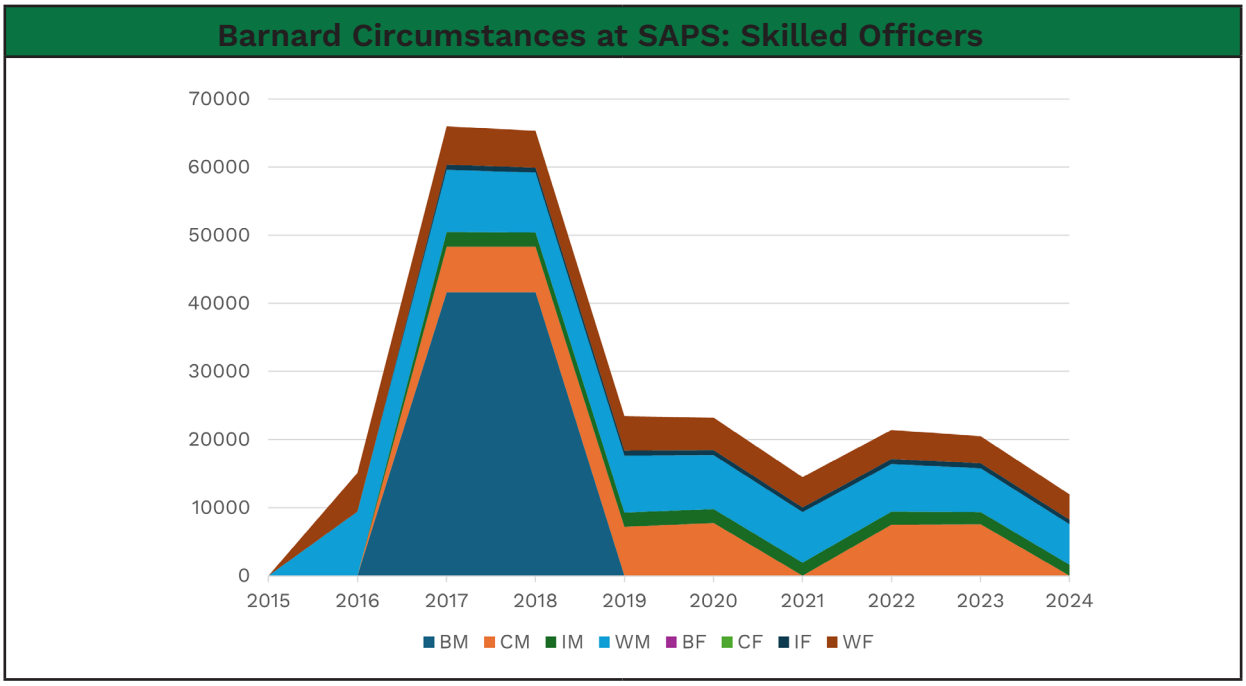
First, it is worth noting that black males were at 52% of skilled officers in 2015, and have remained above EAP ever since. Black females roughly doubled from 13% to 25%.

Second, in 2015, due to the way targets were set, no one was in Barnard circumstances. However, at this stage, Indian and white officers of both genders are in Barnard circumstances.

	BM	CM	IM	WM	BF	CF	IF	WF
2015	0	0	0	0	0	0	0	0
2016	0	0	0	9422	0	0	0	5699
2017	41600	6723	2121	9160	0	0	777	5592
2018	41622	6700	2101	8754	0	0	777	5334
2019	0	7202	2063	8366	0	0	763	5030
2020	0	7752	2052	7874	0	0	756	4734
2021	0	0	1933	7389	0	0	724	4453
2022	0	7502	1901	7014	0	0	736	4233
2023	0	7553	1775	6462	0	0	707	3990
2024	0	0	1635	5901	0	0	666	3729

Table: Skilled officers in Barnard circumstances by race-gender pair, 2024

The graph shows how many people's careers are put in jeopardy by small changes in numbers. The number of black male middle management officers hardly changed between 2016 and 2017, at 3,457 and 3,463 respectively. However, the target dropped from 3,484 to 3,426. That small shift propelled 41,600 skilled officers into Barnard circumstances.
Then the targets were shifted again. Now there are 11,931 Indian and white officers in Barnard circumstances.



Graph: Skilled officers in Barnard circumstances over time

Semi-Skilled Officers over time

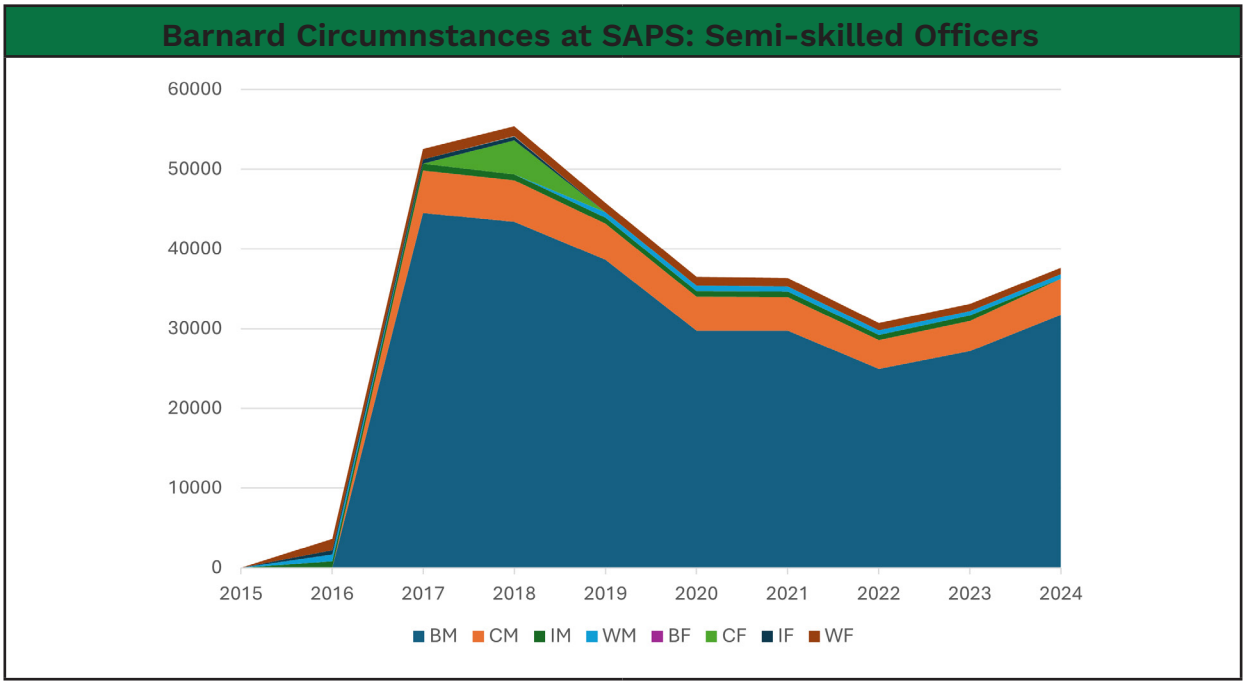
Here is arguably the most shocking result. While there are zero black females in Barnard circumstances, there are 31,738 semi-skilled black male officers facing the danger of being denied promotion due to race under BEE.

	BM	CM	IM	WM	BF	CF	IF	WF
2015	0	0	0	0	0	0	0	0
2016	0	0	828	823	0	0	541	1453
2017	44485	5378	805	0	0	0	535	1331
2018	43395	5197	739	0	0	4284	512	1272
2019	38621	4575	734	676	0	0	0	1201
2020	29758	4238	716	658	0	0	0	1131
2021	29754	4187	714	642	0	0	0	1034
2022	24965	3626	631	574	0	0	0	927
2023	27202	3786	684	551	0	0	0	862
2024	31738	4509	0	572	0	0	0	831

Table: Semi-skilled officers in Barnard Circumstances

Although black females have been above EAP in every year since 2015, the targets have been set so that other than in 2015 black females never faced Barnard circumstances.

On the other hand, black males have also always been above EAP. This time the targets remained the same, but the demographics shifted to create the biggest flux in Barnard circumstances. In 2016 the target for black male skilled officers was 38,719, which remained roughly constant at 38,947 in 2017. However, the number of skilled black male officers shifted from 38,352 to 41,600 over the same period. That sent semi-skilled black males from under target to Barnard circumstances should anyone seek promotion. There are 31,738 black males suffering in this condition now.



Graph: Semi-skilled officers in Barnard circumstances over time

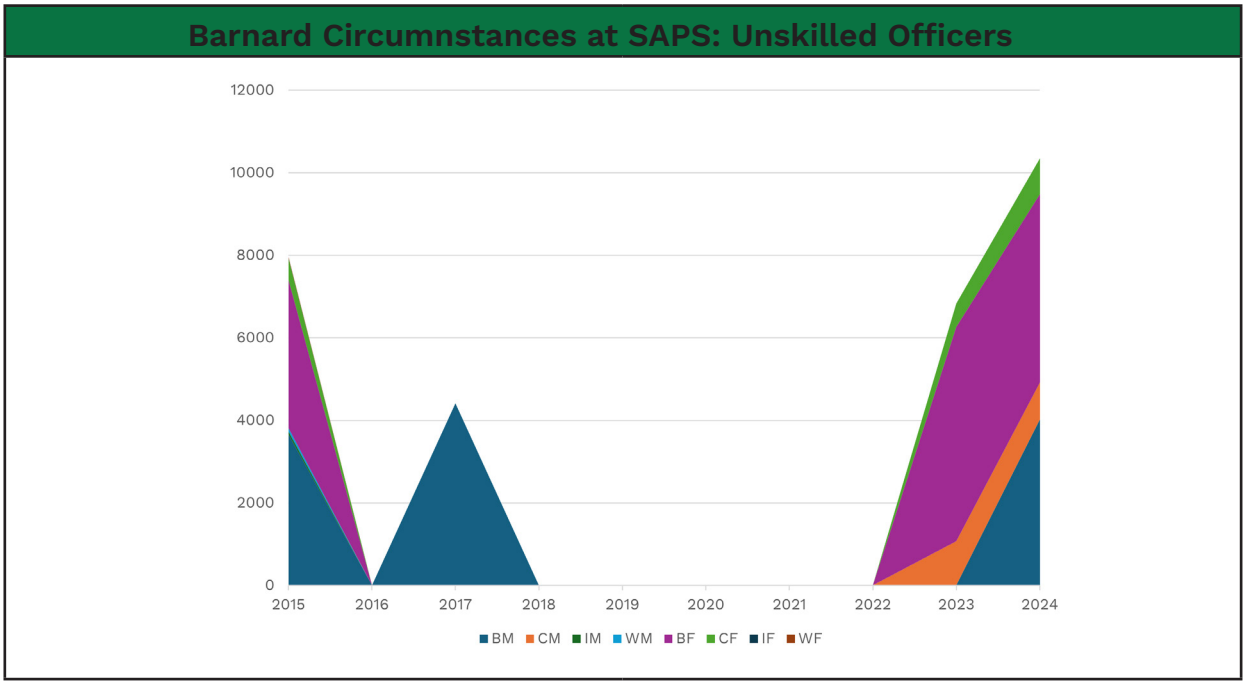
Unskilled Officers over time

At the bottom of the hierarchy black females are at the greatest risk from the Barnard principle under BEE. Black females are 44% and black males are 39% of those facing Barnard circumstances at this level. That sums to 8,597 black officers at risk due to BEE. Likewise, 1,751 coloured officers are at risk due to BEE.

	BM	CM	IM	WM	BF	CF	IF	WF
2015	3658	0	65	84	3586	518	15	29
2016	0	0	0	0	0	0	0	0
2017	4416	0	0	0	0	0	0	0
2018	0	0	0	0	0	0	0	0
2019	0	0	0	0	0	0	0	0
2020	0	0	0	0	0	0	0	0
2021	0	0	0	0	0	0	0	0
2022	0	0	0	0	0	0	0	0
2023	0	1070	0	0	5195	568	0	0
2024	4029	890	0	0	4568	861	0	0

Table: Barnard circumstances for unskilled officers over time.

On the other hand, zero white or Indian males or females face any obstacles from the Barnard principle in seeking promotion while upskilling from the entry level.



Graph: Unskilled officers in Barnard circumstances over time

BEE decisions that directly disadvantage black people

So far, this interim report has pointed to the number of people in Barnard circumstances. It has not, however, detailed how many people have actually applied for jobs and been rejected under the Barnard principle.

A series of formal requests have been made to SAPS to supply the information necessary to establish how many times Barnard conditions have been explicitly used to the disadvantage of each of the official eight race-gender pairs. Furthermore, evidence is being gathered on SAPS job advertisements. However, this is a lengthy process, and this information will be published in the final report.

However, there is not only indisputable evidence that Barnard circumstances have direct legal impact, there is also evidence that this has taken shape directly in favour of white and Indian people, and at the cost of black people. At the Department of Correctional Services, the same BEE "representivity" rule led to explicitly anti-black results. As quoted in the Constitutional Court, an EE Plan stated:[7]

"At level 3 only Whites and Indians should be appointed."

That meant black, and coloured people should not be appointed pursuant to the BEE "representivity" rule.

"At level 13 African Males stand at 63 with a gap of -9 which indicates no African male should be appointed."

This is explicitly anti-black BEE.

The SAPS data indicate that the same is applicable at scale there.

Data: Naidoo circumstances

Now it is important to look at the most extreme Barnard circumstances, namely the Naidoo circumstances. These occur when the "target" is set at "zero" for a particular race-gender pair. The following table represents the number of senior managers that are blocked from becoming top managers due to the Naidoo principle.

	IM	CF	IF	WF	TOTAL
2015	-	-	9	-	9
2016	40	-	10	-	50
2017	48	-	-	54	102
2018	-	-	29	-	29
2019	-	-	12	-	12
2020	-	-	13	-	13
2021	-	-	11	-	11
2022	-	30	-	37	67
2023	-	32	-	37	69
2024	-	32	-	38	70

Table: Naidoo circumstances over time

As you can see, the Naidoo principle has only been applicable against Indian males, coloured females, Indian females, and white females. The 2024 "targets" placed 70 people in Naidoo circumstances: 32 coloured females, and 38 white females.

The changes that have happened over time are predominantly due to shifts in tartets set by SAPS EE plans. It is not clear what motivates those shifts. Why is the target for coloured females "zero"? This is hard to answer. Coloured females are 4.2% of EAP, and there are 27 top management posts in the targets. 4.2% * 27 = 1.134. That means using EAP it would follow that the "target" for coloured females should be 1. Instead, it is zero.

Likewise, white females are 3.4% of EAP. 3.4% * 27 = 0.918. Again, using EAP it would follow that the "target" for white females should be 1. Instead it is zero.

As a result 70 people are in Naidoo circumstances, meaning their promotion should be blocked, *ceteris paribus,* to satisfy BEE "targets" of "zero" for their race-gender pair.

Perception vs Reality

The BEE "representivity" rule has been unfortunately overlooked. The general impression is that most people think BEE's goal is "increasing the number of black people that manage, own and control enterprises and productive assets", as well as paying BEE premiums in public procurement, and state investment in black-owned businesses. Those are part of BEE. But they are not the only legally defined BEE goals. Narrow race-gender "representivity" is also one of those goals.

Elon Musk

Elon Musk, sometimes the richest person on earth, and a former South African, recently stated the following (with added emphasis): “The facts are there for anyone to observe. South Africa now has more anti-White laws than there were anti-Black laws under Apartheid! I am extremely opposed to anti-Black laws, but equally opposed to the laws against White people or other races too. There should be a fair and even playing field.”

Musk is mistaken. There is no doubt that he is right to say “there should be a fair and even playing field”. There is also no doubt that his race, white, has been used against him in the refusal to allow Starlink to operate legally in South Africa. IRR Legal has actively submitted to communications minister Solly Malatsi that he should take simple steps to exempt Starlink, and any similar providers, from BEE in the public interest. On all those points Musk’s position deserves support.

However, Musk is wrong to say that BEE laws are “anti-White”. That ignores the fact that the BEE “representivity” rule is also anti-black, anti-coloured, and anti-Indian. It is also anti-people-who-refuse-to-racially-self-classify.

IRR

As an example of where this is overlooked, the IRR has conducted surveys since 2013 that ask, “Who should be appointed to jobs in SA?”

The options given are:

- Only blacks for a long time ahead;
- Only blacks till demographically representative
- Appointment on merit, with special training for the disadvantaged
- All appointments on merit alone, without such training

There is nothing wrong with asking this question, and publishing its results. However, this question obviously fails to connect with how BEE actually operates in terms of its “representivity” rule of BEE. Under this rule it is not “only blacks” who are appointed until representivity is reached. Coloured, Indian, and white people are also appointed. Furthermore, black people are sometimes blocked from appointment in pursuit of representivity.

Social Research Foundation

The Social Research Foundation (SRF) misleads the public since it creates the impression that BEE includes the policy of only hiring black people across the entire public service. However, this is not the case presently, or in the past, nor is it a plausible variant of BEE in the future. BEE legislation imposes the “equitable representation” rule, not an 100% black appointments rule. If legislation is amended to introduce a “100% black appointments rule” that would dissolve BEE, just as it would dissolve BEE if new legislation banned all racial discrimination in job appointments.

To see how the SRF creates the misimpression that BEE includes "only blacks" job appointments across the entire public service note that its report says it "investigates the BEE policy preferences of registered South African voters" via questions.[8] The first question is, "Which statement do you agree with:

- 'A future coalition government makes raced-based appointment rules stricter, so that only black people can be appointed as government officials.' OR
- 'A future coalition government gets rid of race-based appointments so that all government officials are appointed only on merit.'

The first option is not BEE, never has been, and does not resemble BEE which has always imposed "equitable representation" where it has been in force. The second option is also not BEE. Therefore, the SRF purports to investigate "BEE policy" by asking questions that do not present a single BEE policy, but instead presents two non-BEE policies. The standard assumption of readers (and reports) has been that the "only blacks" option really is a BEE policy.

Likewise, the SRF asks if people approve of making "race-based procurement rules stricter, so that only black-owned companies can win government tenders.'

The notion that 100% of government tenders should go black-owned companies is also not BEE, and never has been. Amongst other things, this would require the government to make zero procurement from foreign suppliers, which is not something that has been seriously proposed by anyone.

In summary, the notion that 100% of procurement and 100% of appointments to official government positions should go to black people is not BEE, never has been, and would directly violate various aspects of BEE legislation, including: the EEA, the PPPFA, the PPA, and the B-BBEE Act.

Again, asking the question itself is benign. The IRR will surely continue to ask this question, since it shows what the public thinks about an exclusively pro-black racialist policy. But the caution must be against sustaining the misimpression that this is BEE. SRF reporting that "only blacks" across all appointments and procurement constitutes BEE sustains the myth BEE is pro-black and anti-white, and that the most extreme form of BEE would be one in which only black people are appointed.

Instead, the most extreme form of BEE is one in which the Barnard principle applies rigidly against every worker in South Africa, which will sometimes help some white individuals, and sometimes harm some black, coloured, and Indian individuals, as has happened at SAPS

BEE “Frank Dialogue”

At the BEE “Frank Dialogue” organised by Dr JJ Tabane there was an illustrious list of speakers and panellists, including former President Kglema Mothlanthe, Minister of Trade and Industry Parks Tau, and BEE Commissioner Tshediso Matona. I asked the audience: “True or false, how many people think that BEE has explicitly and deliberately prevented black women from getting jobs?”[9]

The MC, Masa Kekana, asked for a show of hands. No one raised their hand in a room of at least one hundred professional BEE experts.

Kekana asked Commisioner Matona for his response. “I think what Gabriel is dishing out is scare stories. Very anecdotal. I don’t know where he draws that…from.”

Advocate Dali Mpofu said: “These kind of examples that are made here by Gabriel, that stuff is completely irrelevant.”

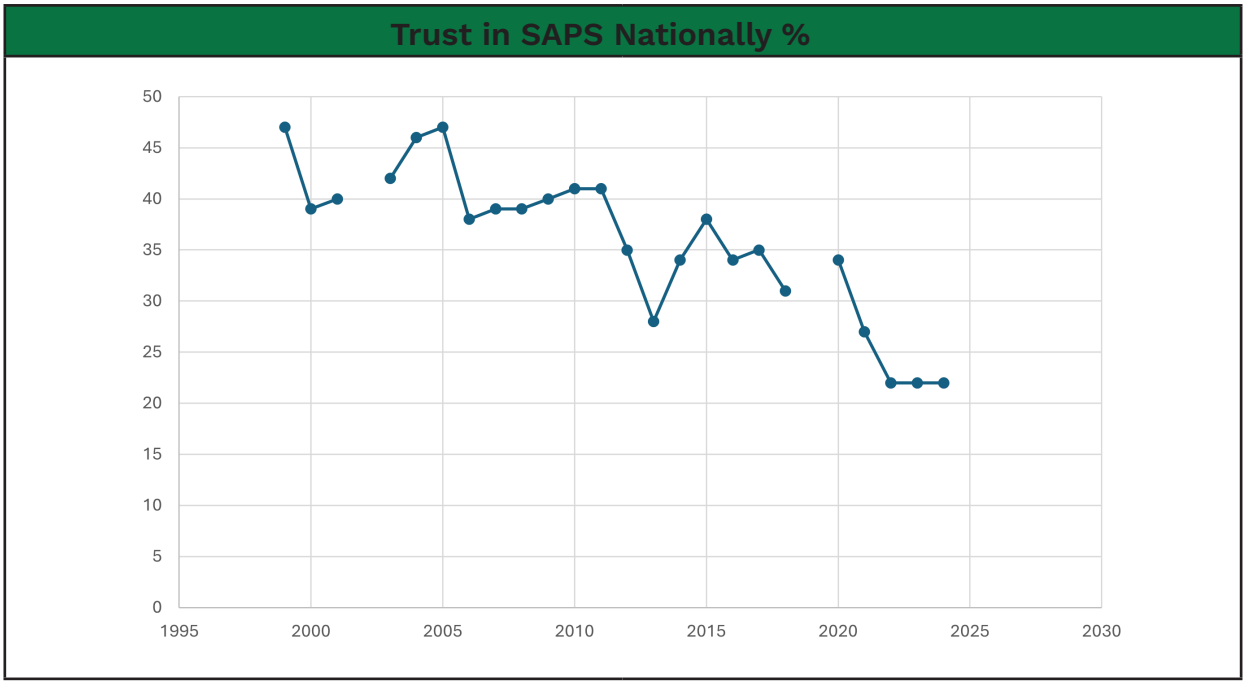
However, the moment the formal proceedings concluded three different professional BEE consultants thanked this author for drawing attention to the direct anti-black consequences of BEE. One, who asked to remain anonymous, said: “I have just had to tell [company name removed] that at one salary level they are only allowed to hire 300 white men, because of BEE Regulation 9(10) of the EEA.”

The reality is that BEE directly harms black people, its nominal beneficiaries, through the “representivity” rule. The perception carefully maintained by those in the know is just the opposite.

Police effectiveness and trust

Some form of affirmative action was specifically needed in the police to ensure trust and legitimacy, which are preconditions of successful policing in an open, constitutional democracy. Given the track record placing tens of thousands of officers in Barnard circumstances over a decade, the question stands: are SAPS effective and well trusted?

Trust in the police has declined dramatically since 2005 according to polling commissioned by the HSRC. In 2005 47% of respondents said they trust, or strongly trust, SAPS. That figure has dropped to 22%.



Graph: Trust in SAPS from HSRC polling

Similar results have been found by Afrobarometer, another pollster.

This interim report does not argue that BEE is the reason trust in the police has declined. Direct causes of trust decline are corruption, and a failure to solve crimes, However, the open question is whether BEE indirectly contributes to a decline in trust in SAPS.

Three reasons are worth consideration:
1) Morale is undermined by BEE.
2)The incentive to strive for excellence is undermined.
3) Talent is chased away.

On point 1) it is worth noting that then-Commissioner Rasegatla aimed to promote Barnard in 2005, despite the fact that this would undermine “equitable representation”. The SCA records his reasoning as follows:

“His concern, understandable because of his rank and managerial position, that the wrong signal would be sent to Barnard is not one that can lightly be discounted. Human resource management both in the private and public sector must be concerned about morale and cohesion within a workforce.”

Furthermore, Barnard’s recommendation letter, signed onto by Rasegatla and the rest of the evaluation panel that sought her promotion, stated (with added emphasis): “National Evaluation Service strongly believes that in the interest of service delivery...that the candidate should be appointed as recommended by the panel.”

However, then National Police Commissioner (and disgraced criminal) Jackie Selebi disagreed. He blocked the appointment, kept the post vacant, and then terminated it. The post was empowered to investigate corrupt police.

So, at least in the most famous case there is a direct nexus between BEE and blocking efforts to curb corruption in SAPS.

The full report will investigate this nexus further.

Lessons

The lessons drawn from SAPS for the wider country are clear, and alarming. The officers in blue, of all races, that are sworn to protect and serve the people of the rainbow republic deserve support and respect. The current BEE system is failing those officers, and so failing the republic whose peace they defend.

SAPS has a workforce of nearly 200,000, out of which typically around a third have been in Barnard circumstances for the last decade. It is no simple matter of supposing that only one race, or one gender is at risk. There are dynamics across ranks, and across time, in a fluid, constantly shifting picture.

However, in numerical terms the largest group in Barnard circumstances are black males. It is crucial to realize that even though “BEE” is supposed to mean “black empowerment” its practical effect at SAPS is the opposite for many officers.

As Regulation 9(10) of the EEA now covers over 7.5 million workers a similar dynamic might well emerge at national level.

The primary practical lesson is that the BEE “representivity” rule is no guarantor of improved trust, legitimacy, or effectiveness. Rather, there is a significant risk that the BEE rule is undermining morale, cohesion, and service delivery by blocking the best candidates of all races from promotion.

The primary political lesson must be that people like Elon Musk are wrong. BEE is not anti-white, and pro-black. BEE puts people’s livelihoods at risk across all eight official race-gender pairs. If this fact were broadly known, rather than carefully ignored, South Africans would be in a far better position to bring about a legislative scheme that programs the republic for safe growth.

Endnotes

1. Pg. 5, Refusing Forced Racialisation at Work, 2025, GC
2. See the Surplusage Canon, related to the Latin verba cum effectu sunt accipienda, which means "words are to be given effect". When faced with multiple interpretations, interpreters should-choose the one that gives meaning and effect to all the words. If the EEA's separate reference to"equal opportunity" were interpreted to mean nothing more or less than "equitable representation" this would be violate the canon of construction.
3. Paragraph 40, Davids v Correctional Services, Constitutional Court (CCT 78/15)
4. The "Naidoo principle" was established in the Labour Appeals Court judgment in Naidoo v SAPS, case no: JA 66/2013.
5. It is trite that countless judgments from the pre-1994 courts have been carried over, upheld, and-praised by the rainbow republic's courts.
6. For example, the target for black female top management in 2017 was 14, in 2018 it came down-Likewise, the target for white males in top management was 1 in 2017, and shot up to 14 in 2018 In 2019, the targets were back to 1 and 12 for white males and black females at top management respectively.
7. Paragraph 105, Davids and others v Dept Correction Services, case CCT/ 78/15
8. SRF Report, https://srfreports.co.za/reports/south-african-public-opinion-on-bee
9. entire public event can be viewed at https://www.youtube.com/watch?v=fWk8mu_CS6w&t=17624s

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