**THE NATIONAL ASSEMBLY**

 **QUESTION FOR WRITTEN REPLY**

**Question 639**

**Adv A de W Alberts (FF Plus) ask the Minister of Trade and Industry: †**

1. Whether the programme of broad-based black economic empowerment (BBBEE) is an exception to the principle of equality in terms of section 9 of the Constitution of the Republic of South Africa, 1996; if so, according to which criteria and time line will the BBBEE programme be discontinued;
2. whether the said programme is an integral part of the principle of equality that will never be abolished; if not, in what way and on what legal basis will the programme be a permanent aspect of the South African society; if so, what are the relevant details of the legal basis on which the interpretation is based?[NW713E]

**RESPONSE:**

(1) B-BBEE is not an exception to the principle of equality in terms of section 9 of the Constitution of the Republic of South Africa:

In fact, section 9(2) of the Constitution states that:

“Equality includes the full and equal enjoyment of all rights and freedoms.

 ***To promote the achievement of equality,*** ***legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken***.”

In promoting equality as envisaged above, the Broad-Based Black Economic Empowerment Act No. 53 of 2003 (“the Act”) was enacted and subsequently amended by the B-BBEE Amendment Act No. 46 of 2013. The Act as amended and the B-BBEE Codes of Good Practice constituted the legislative and other measures which are designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination.

* Section 14(1) of the Act entrust the Minister of Trade and Industry to make regulations with regard to:
	+ Any matter that in terms of the Act may or must be prescribed;
	+ The lodging of complaints with the BEE Commission;
	+ The conducting of investigations by the Commission;
	+ The information that any organ of state, public entity or private enterprise is required to provide to the Commission and the form and period of such reporting;
	+ Requiring all broad-based black economic empowerment transactions above a prescribed threshold to be reported to the Commission; and
	+ Any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation and administration of the Act.
* Section 14 (2) of the Act provides as follows:
	+ The Minister may by notice in the Gazette issue guidelines and practice notes relating to the interpretation and application of the Act.

(2) B-BBEE is an integral part of the principle of equality in terms of section 9 of the Constitution of the Republic of South Africa;

- In terms of the Statement 000 of the B-BBEE Act 46 of 2013, as amended-

- Paragraph 12: Duration of the Codes

* A Code remains in effect until amended, substituted or repealed under Section 9 of the Act.
* The Minister may review the Codes at any stage and regular reviews will take place to monitor the implementation of BBBEE throughout the economy