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MALAYSIA OFFERS SOUTH AFRICA AN INTERESTING comparative case of affirmative action. The target group in Malaysia, like South Africa, is the majority group. It is, however, important to note from the outset one important difference between the two countries: that the non-targeted group in Malaysia — that is, the group which is presumed to have been favoured in the past and who faces some degree of discrimination in order to correct certain perceived structural injustices — has never been in a position of political power. The Chinese and Indian minorities in Malaysia benefited not through targeted public policies, but because of their ability to take advantage of economic opportunities within the system. Historical discrimination in Malaysia was thus of an indirect nature, consisting of structural constraints on Malay participation in the modern sector of the economy, rather than one of domination and exploitation of Malays by other groups. In fact, during the colonial period affirmative action programmes were introduced to favour the Malays, rather than the other communities. The affirmative action introduced after independence is thus a continuation and intensification of colonial policies.

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Summary of interventions pertaining to affirmative action in Malaysia

Problem	Year	Interventions
Ethnic division	1947	Constitution article 153/1
	1971	New Econom

Nevertheless, Malaysia is perhaps the only country to include some form of affirmative action in its independence constitution. The bases for affirmative action in Malaysia are thus in many respects unique to the political situation of the country at that time. There are two important differences with regard to the form of affirmative action adopted in Malaysia and that adopted in countries such as the United States: first, affirmative action in Malaysia is defined specifically in ethnic terms. Second, unlike the United States, the group expected to benefit from affirmative action in Malaysia was the majority of the population with a preponderance of political power. This group was therefore in a position not only to implement affirmative action according to the law, but also to give that law the widest possible interpretation.

Malaysia has a plural society comprising Malays, Chinese and Indians. In 1947, Malays made up less than 50% of the population and therefore constituted the single largest majority. The Chinese comprised about 39% of the population in 1947. The rest of the population was made up of Indians, Ceylonese and others. The ethnic divisions in society were further reinforced by religious and cultural differences.

The post-independence government in Malaysia was a coalition of three groups. In 1948, the post-independence constitution included a clause which referred to 'special rights' for Malays, guaranteeing the continuation of affirmative action policies. The wording of the constitution was, however, somewhat vague. It did not specify what these 'special rights' were. In 1969 a riot broke out, characterised by ethnic violence. As a result, the Malay-dominated government started to take the notion of 'special rights' seriously. In 1971, a stronger version of affirmative action was introduced in what was called the New



Regulatory action

Preferential treatment in favour of Malays in the Public Service.

Provides for Malay dominance in certain section of the Public Service.

Quota strategy of affirmative action imposed.

Guarantees protecting the legitimate interests of other communities, such as the rights of those groups in public employment to keep their jobs despite preferential treatment for Malays.

cy Reduce inequality.

Implement informal racial quotas.

Implement special programmes favouring Malays.

Economic Policy, which was intended to accelerate economic growth and provide special benefits for Malays. In particular, the national economic policy aimed at assisting Malays to move from agricultural occupations to the more lucrative urban foundations where opportunities for socio-economic advancement were much greater. (See table above.)

Malays had been economically disadvantaged in the past and there was a need to correct ethnic imbalances in income and wealth through affirmative action. It was accepted that affirmative action was necessary to correct the socio-economic difference in income between Malays and Chinese. Provisions were therefore made in the constitution in a form of protective discrimination in favour of the Malays.

Preferential policies were duly formulated for Malays in public employment both at the state level and at federal level. A special school was set up to train Malays for jobs in the Public Service. An independent Constitutional Commission was set up to make recommendations for a democratic Malaysia. The Commission was in favour of some form of affirmative action for Malays. It maintained that Malays would be at a serious and unfair disadvantage compared with other communities if these preferences were withdrawn. However, they believed that there should be some time-span after which these privileges should be reviewed. The Commission recommended that existing preferences be reviewed 15 years after independence in order to determine whether to retain or to reduce any quota or to discontinue it entirely. At the same time the Commission recommended that if in any year there were not enough Malay applicants qualified to fill the quota of vacancies, the number of appointments should not be reduced and other qualified applicants should be appointed. However, the United

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Malays National Organisation (UMNO), which was the earliest political party, supported by Malays, opposed these recommendations as well as putting any time limit on the special rights clause.

The government, in implementing affirmative action programmes, nevertheless took into consideration the rights of non-Malays as well. However, despite these provisions the other ethnic groups were denied employment in certain sections of the higher Public Service; they were employed in large numbers only in its clerical and technical branches. These positions were mainly occupied by the English-educated Indians and Ceylonese.

Article 153 of the Constitution was thus enforced, to fundamentally provide for Malay dominance in certain sections of the Public Service. A quota is imposed which guarantees that these positions be permanently filled by Malays. In this regard, the government has imposed a recruitment quota in respect of certain services, namely four Malays to one non-Malay in the Public Service; three to one in the judicial and legal services; three to one in the Customs Services and four to one in the police force. The quota in the armed forces extends to the rank and file. Public employment therefore grew from about 250 000 in 1965 to 850 000 (or about 12,8%) of the labour force by 1975. The ethnic breakdown of public sector employment by 1990 shows that out of 850 000 people, nearly 66% are Malays.

The quota system in Public Service employment applied only to five services and the higher echelons of the Public Service. There was, however, no quota imposed for most of the Public Service. The professional and technical services as well as the clerical services were filled by non-Malay officers.

The quota strategy therefore only applied to recruitment; thus, once candidates were employed, the Constitution provided for equal treatment with regard to promotion and in-service training. Selection was also undertaken according to the merit principle. This is supported by Article 136 of the Constitution which provides that after entry, all state employees are subject to the terms and conditions of their employment and must therefore be treated impartially.

The Constitution also guaranteed protecting the legitimate interests of other communities, such as the right of those in public employment to keep their jobs, despite preferential treatment for Malays. Therefore, although the quota strategy restricted employment of non-Malays in certain sections of the Public Service, non-Malays were not denied access to other sections where there was no quota. However, the existence of a quota in some services, combined with the fact that there was an insufficient number of qualified Malays to fill posts in the professional and technical services, resulted in an over-representation of Malays in the administrative and semi-professional services and in the police and armed forces, and under-representation

of Malays in the professional and technical services.

Conclusion

The most significant change over the 20-year period has been the reduction of the incidences of poverty. If one measures success or failure in terms of equality of results, there is no doubt that the distribution of income, wealth and occupations among individuals reflects a more balanced ethnic mix. Malays now occupy positions that were monopolised by non-Malays in the past. The government, by adopting a flexible approach in the implementation of the New Economic Policy, has been able to reduce some of its negative economic effects.

Nevertheless, the rapid rate of economic development has provided job opportunities for both Malays and non-Malays, in the public as well as private sector. For the next 20 years the economy of Malaysia grew between 6% and 8% a year, which resulted in a general increase in the level of income for all ethnic groups and this has been one of the most effective important factors contributing to the success of affirmative action programmes. The political stability since 1969, together with the introduction of various tax exemption policies for new industries and various other incentives to attract foreign investment, has resulted in high levels of economic growth. As a result, the country has a low unemployment rate of about 6%. The rate of unemployment is roughly the same for all ethnic groups, thus supporting the government's claim that it has implemented affirmative action policies in a fair and just way. The willingness and co-operation of the non-target groups in the affirmative action programme was a major factor contributing to its success.

However, the defining of affirmative action in ethnic terms has contributed to the strengthening of ethnic institutions. Thus, slowly a pattern of majority rule is being established, in which there is Malay-dominant rule and non-Malay minority opposition. This is seen especially with regard to the independence of the Public Service and the judiciary. It is difficult for the Public Service to maintain an image as an impartial, politically neutral body when it is constantly called upon to make political decisions based on ethnic considerations, rather than on objective criteria of need and merit.

Furthermore, the inclusion of the special rights clause as a permanent feature of the Constitution contradicts the provision relating to fundamental rights of the individual. Nevertheless, it is a widely accepted view that the policy has been successful in Malaysia and could thus serve as a useful model for the South African scenario. □

Goonasagree Naidoo,

head: affirmative action,

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