

POLITICAL ECONOMY OF AFFIRMATIVE ACTION REGIME FORMATION: MALAYSIA AND SOUTH AFRICA

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Paper presented at a
Department of Development Studies Seminar
4 November 2011

Overview

- Malaysia and post-apartheid South Africa
 - Stand out as middle-income countries that implement affirmative action (AA) in favour of a majority race group.
- But fundamental differences in institutional framework and specific AA policies
- Formation of affirmative action regimes in Malaysia and South Africa:
 - Constitutional provisions for AA
 - The structure and inter-racial dynamics of political transition
 - Inter-racial socioeconomic disparity

Basis for comparative study

- *Extensive and intensive AA in favour of a politically dominant and economically disadvantaged majority race group*
 - Bumiputera in Malaysia: Malays and other indigenous groups (67 per cent of population);
 - “Black” category in South Africa conventionally refers to Africans, Coloureds and Indians (91 per cent of population)
- Colonial and Apartheid legacies
 - systemic forms of disadvantage
 - severe group under-representation in socially esteemed and economically influential positions

Limitations in the literature

- Predominantly, Malaysia as a reference point for South Africa
 - Not both countries as mutually informing experiences
- No reference to South Africa in any literature focusing on affirmative action in Malaysia

Limitations in the literature

- Country-specific literature gravitate toward particular conventions and norms in the definition of affirmative action
 - tend to circumscribe the conceptual framework of AA across countries
 - AA encompasses interventions in education, employment and ownership in both countries, but bulk of research has centred on equity ownership in Malaysia and on employment in South Africa
- Inadequate attention to the formation of affirmative action regimes and their consequent characteristics

Conceptualizing Affirmative Action

Drawing on scholarly work and giving consideration to the Malaysian and South African contexts, key elements of AA:

Preferential measures to increase

representation of

disadvantaged group(s) in

socially esteemed and economically influential positions (tertiary education, high level employment, ownership)

Constitutional provisions for AA

Malaysia

- Basis for AA: special position of Bumiputera
- Areas of intervention specified:
 - education, public sector employment, licensing

South Africa

- Basis for AA: disadvantage due to unfair discrimination; equitable representation
- General mandate
- specific reference to government procurement, public sector employment

Constitutional provisions: Malaysia

- Article 8 sets out individual equality and prohibition of discrimination
 - “[e]xcept as expressly authorized by this Constitution”
- Article 153 grants such authorization
 - provisions for the Yang Di-Pertuan Agong to “exercise his functions under this Constitution and federal law in such manner as may be necessary to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak [i.e. the Bumiputera] and the legitimate interests of other communities”
 - by reserving places for the designated group in public sector employment, scholarships, training programs, and licenses.

Constitutional provisions: South Africa

- **Article 9**: “[t]o 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”
- **Article 29**: permits consideration of “the need to redress the results of past racially discriminatory laws and practices” when administering education
- **Article 195(1)**: “[p]ublic administration must be broadly representative of the South African people”
- **Article 217(2)**: provides for “categories of preference in the allocation of contracts” and “protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination”.
- **Employment Equity Act (1998)**: Chapter 2 headlined “Affirmative action” → to redress unfair discrimination

Implications of Constitutional provisions

- AA granted a considerable measure of legitimacy
 - At the same time, wide scope for political manipulation and perpetuation of group preference
- Different ways of negotiating tensions between preference and equality
 - Malaysia: racial preference vs legitimate interests, spheres of intervention (public sector) and spheres of non-intervention (private sector)
 - South Africa: more direct engagement with contending interests, legal recourse for minorities denied opportunity
- Orientation around particular modes of operation
 - Malaysia: quotas and reservations
 - South Africa: goals and targets

Structure and inter-racial dynamics of political transition

Malaysia

- Continuous Malay political power and dominance in bureaucracy
- Increasing executive dominance, centralization
- Reassertion of Malay primacy

South Africa

- Shift from white minority rule to black majority rule
- Democratization, decentralization, institutional autonomy
- Declaration of non-racial, non-sexist society

Implications of political transition

- Mode of governance
 - Malaysia: executive dominance, discretionary, top-down
 - South Africa: legislative route compelling pursuit of AA through statutes and codes
- General forms of AA programmes
 - Malaysia: racialization of politics post 1969 → context for quota-based measures, Bumiputera-exclusive programmes
 - South Africa: Principle of deracialization, dangers of alienating minority white population → representativeness and diversity, targets and incentives

Inter-racial socioeconomic disparity and minority economic strength

Malaysia

- High foreign ownership, Chinese presence not dominant in all industries
- Continuous Malay dominance in public sector

South Africa

- Dominant white ownership across all industries
- White dominance of public and private sectors

Inter-racial socioeconomic disparity and minority economic strength

Household income ratios

- **Peninsular Malaysia (1967)**
 - Chinese-Malay: 2.47
 - Indian-Malay: 1.95
- **South Africa (1991)**
 - White-African: 11.1
 - White-coloured: 5.7
 - White-Indian: 3.0

Implications of inter-racial disparity

- State power versus capital

- Malaysia: State relatively stronger to extract concessions, moderating effect of external target (foreign ownership)
- South Africa: State largely conceded economic and asset redistribution agenda to capital – more assertive toward late 1990s

- Scope of intervention in employment

- Malaysia: AA in public sector, public institutions
 - No history of direct exploitation between race groups
- South Africa: AA across public and private sectors
 - History of direct exploitation → grounds for redress

Institutional framework of AA regime

Malaysia

- Discretionary executive authority
- Intensive, direct interventions in tertiary education, equity ownership, public sector employment
- Quota-oriented, relatively centralized in administration

South Africa

- Statutory and codified system
- Intensive, direct interventions in public and private sector employment; less intensive, indirect interventions in tertiary education, equity ownership
- Target-oriented, less centralized administration

AA policies and key features: Tertiary education

Malaysia

- Racial quotas in public tertiary institutions; creation of Bumiputera-exclusive institutions and scholarships
- Centralized administration

South Africa

- Redress programs within and between institutions
- Institutional autonomy

AA policies and key features: Employment

Malaysia

- Public sector employment quotas / implicit racial preference

South Africa

- Employment equity legislation:
- applies to public sector and medium- to large-scale private companies

AA policies and key features: Ownership

Malaysia

■ Phases of policy emphasis:

State-owned enterprises

→ Takeover of foreign companies, mandated equity transfers

→ Heavy industries

→ Privatization

→ Government-linked companies

■ Quotas and reservations in licensing and public procurement:

■ Ownership is sole criterion

South Africa

■ Public enterprises

■ Black Economic Empowerment (BEE)

■ Award system for public procurement according to a 'scorecard' with seven criteria:

- ownership
- management control
- employment equity
- skills development
- preferential procurement
- enterprise development
- socio-economic development

Conclusions and Implications

- Limited scope for transferring policies
 - Context of Malaysia's AA: executive dominance, pseudo-democracy, racialized politics, explicitly race-based policies
 - South Africa's AA, embedded in democratic system
 - ➔ pointers for Malaysia
- Duration and efficacy of AA
 - Constitutional provisions for preferential programs are voluntary, not mandatory
 - Although the possibilities for substantively dismantling policies seem politically intractable

Conclusions and Implications

- Dilemma of inclusiveness amid preference continues
 - Excluded groups
 - Sense of entitlement and primacy, disproportionately benefit particular ethnic or other sub-groups within the designated group
 - Class-based or need-based considerations do not substitute for race-based affirmative action, but complement measures to redress racial under-representation through targeting the socioeconomically needy within the beneficiary group and facilitating upward mobility.

political will is pivotal to engender changes that ultimately make affirmative action constructive, equitable and impermanent.

Thank you!
Terima kasih!
Siyabonga!