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Social and Economic Transformation– International Scan and Lessons Learnt

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Social and Economic Transformation– International Scan and Lessons Learnt

Nokuhle Madolo-Mtegha [α] & Hudson Mtegha [σ]

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I. Introduction

Transformation is about change of consciousness, replacing what already exists with something completely new. The State must dismantle and emotionally let go of the old ways of operating while the new state is being put in place. The transitional phase can be project managed and effectively supported with traditional change management tools. Change management pundits are of the opinion that any change effort should have a well defined future state, an assessment of the current state and a clear and precise strategy to move from the current state to the future and desired state. It is in the implementation of the strategy that problems present themselves in conducting a serious review, let alone a review of the transformation of societies with long history of social and political inequality. Effective transformation can be better defined as arriving at an acceptable position in society in redressing past injustices. Four countries were selected for review, namely Malaysia, The United Stes of America (USA), Brazil and New Zealand.

The choice of these countries is based on their similarities with each other in the discrimination suffered by the disadvantaged group as a result of colonization and its effect. The purpose is to draw on the lessons learnt from policy designed towards the social and economic integration of ethnic groups with the principal objectives to have equal participation of previously disadvantaged people in the mainstream economy. The lessons drawn from the review of these countries can be adapted in informing recommendations of the strategies that can be used in any country wanting to realign its social engineering and achieving success in the affirmative action program. In the examination of transformation agenda of the chosen countries, the analysis is based on primary and secondary sources, as well as books, journals, newspapers and internet sources.

These four countries adopted comprehensive strategies of affirmative action designed to benefit a group of people who were previously disadvantaged by the enactment of legislative instruments to ensure some form of equality of the different ethnic groups.[1] This was to ensure that one group does not remain su[1]bservient to an economically and in most instances politically dominant group of ethnic groups in these countries.[2] These countries sought to address invidious distinctions among individuals because of their race, ethnicity, or national origin. Remedial actions have been taken by these countries where certain groups have been disadvantaged for a long time and there was a need for affirmative action to level the playing field.

The term affirmative action means different things in different contexts and to different people, so it must be used with caution. The term nonetheless suffices as an amalgam of measures taken by governments to redress past historical imbalances in opportunities for education, employment, economic participation, ownership of assets and control. These historical imbalances have necessitated interventions by states to redress sharp racial divisions that ultimately resulted in unequal income levels. These "Affirmative Action" programmes were necessitated by pressing problems of economic inequality between the races. Affirmative action policies' main purpose is to address and redress systematic economic and political discrimination against any group of people that have been historically underrepresented or has a history of being discriminated against in particular institutions. Their primary emphasis in most instances has been on addressing racial discrimination. Studies have shown that racism, rather discrimination. Studies have shown that racism, rather than being self-correcting, is self-perpetuating. The disadvantages to the discriminated

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[1] Affirmative action is defined by the Oxford dictionary as action favouring those who tend to suffer from discrimination, positive discrimination.

[2] Affirmative action policies are highly encompassing as they permit the use of race and other factors such as gender and ethnic origins in decisions to allocations of public benefits, such as employment, admissions to schools, where different ethnic groups live and allocations of resources. They are implemented in diverse spheres such as economic, political, educational and healthcare.

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group and the benefits to the advantaged group are passed on to each succeeding generation unless remedial action is taken.

Affirmative action has been given international status and the right of states worldwide to implement it by Article 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination, which stipulates that affirmative action be demanded of states that have ratified the Convention, in order to rectify systemic discrimination. It however stipulates that such programs "shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." The United Nations Human Rights Committee is of the opinion that:

> *The principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve the granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination, in fact, it is a case of legitimate differentiation under the Covenant."*

A comparative analysis would bring to the fore that national unity is unattainable without greater equity and balance among a country's social and ethnic groups in the participation of the country's development and in the sharing of the benefits derived from economic growth. It would be virtually impossible to achieve national unity if a vast section of the population and in some instance even a minority of the population remains poor. In addition, if economic equality is not achieved, peaceful co-existence can never be achieved as chaos and riots would be the order of the day.[3]

Affirmative action or preferential policies are international phenomena. The concept is a feature of societies which consist of plural ethnic or religious groups at such different levels of economic and social development that leveling the playing field and overcoming disadvantages thus introducing some equality requires government intervention. Affirmative action policies help mitigate the historical effects of institutional racism. It also addresses the effects of current discrimination, intentional or not. South Asia and India in particular embarked on such policies much earlier than the USA. The concept is actually wrongly perceived as originating from the USA when that is not the case. It is the international publicity and controversies attached to the preferential and affirmative action's programmes in the US social policy since the 1960's that has brought a misconception that variations of these policies have spread to other parts of the world in imitation of the US prototype of such policies. It is worthy to note that affirmative action or preferential policies have common features in all four of these countries, they all have salient and distinctive features as well (KM de Silva)[4]

a) Malaysia

Malaysia is significant as a case study in affirmative action because of its diverse ethnic groups and is regarded as one of the most successful countries to have achieved economic growth over the last century. It has been a major supplier of primary products to industrialized countries, such as tin, rubber, palm oil, timber, oil, liquefied natural gas, etc. Since the 1970's, it has seen a major development in the export-oriented manufacturing industries such as textiles, electrical and electronic goods, rubber products, etc. The 1990's saw the country's transition economically to Newly-Industrialized Country (NIC) status. Malaysia is perhaps the best example of a country that has seen significant economic growth, which necessitated the economic roles and interests of the various racial groups to be pragmatically managed in the long term without significant loss of economic growth momentum, despite inter-ethnic tensions which manifested in violence, notably in 1969.

Malaysia has a long history of trading and its commercial importance enhanced by its strategic position athwart the seaborne trade routes from the Indian Ocean to East Asia. What makes Malaysia also significant in relation to socio-political economy is its focal point for both local and international trade as it was also penetrated by the European trading interests, first the Portuguese from 1511 as a trading destination of the Dutch East India Company (VOC) for trade in pepper and various spices. In about the 1600 there was also competition for trade in the area by the English East India Company (EIC) in the same commodity, that of spices, and by the 1800 the VOC was dominant. This saw Malaysia as a staging post in the growing trade with China and also was strategic for the British to expand control of the Malay Peninsula from about 1870. Over these centuries there was growing inflow of migrants from China attracted by the trading opportunities and as

[3] The Malaysian affirmative action began after the bloody riots between affluent Chinese and impoverished Malays in 1969 killed hundreds for example. There are the same examples that can be quoted for elsewhere in the world where race based paradigm at restructuring society has occurred.vv.

[4] Ethnic Studies Report, Vol. XV, No. 2, July 1997.

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wage labour force for the growing production of export commodities such as gold and tin. The indigenous people were also engaged in the commercial production of rice and tin but remained relatively within a subsistence economy and were not keen to offer themselves as a permanent wage labour.[5] The growth of the trading sector around these times was already foreign dominated, even though was still in its infancy (Drabble, 2000).

The history of social and economic differences among the various ethnic groups in Malaysia cannot be separated from the growth of its multi-ethnic society. To gain an insight in the ramifications of the multi-ethnic society in Malaysia, a brief historical perspective is necessary. The 1920's saw the large inflows of migrants in Malaysia and this created a multi-ethnic population of the type which the British scholar, J.S Furnivall (1948), described as a plural society in which the different racial groups co-existed under a single political administration and do not interact with each other either socially or culturally, apart from economic transactions. Many of the migrants who ended up being permanently domiciled in Malaysia their original intention was to come for a limited period, say 3-5 years, save money and then return home. Circumstances changed and saw a growing number staying longer, having children and staying forever. The economic developments happening at that time saw in boom times the immigrant inflows in certain areas by far outnumbering the indigenous Malays.

The Indians and Chinese, in terms of social and cultural, recreated the institutions, hierarchies and linguistic usage of their country of origin. This led to social stratification of society. This was particularly so in the case of the Chinese. The Chinese came as traders or mine workers shipped in by colonial rulers made up 25 percent of the population, but held 40 percent of the nation's wealth. The Chinese also dominated the mining and agricultural sectors. This led to the creation of immense wealth and division of labour in which economic power and function were directly related to race. The Malays were mainly rice growers in the rural areas.

The economic disparities led to a growing discontent among the Bumiputera that were not partaking in this economic growth and were losing their ancestral in heritance, that is land. This also led to it becoming a source of fear to the Malays whose claim of indignity to the land dated thousands of years. It was this fear that was among the early factors, coupled with resentment against British colonial rule which saw the emergence of Malay nationalism between the periods of the two World Wars. It was this economic marginalization that lay the seed for the 1969 violence that was to follow (Ghee 1977).The inter-racial economic disparities became the source of political campaigns and these latter became apotentially explosive phenomenon underlined by sharp racial undertones that resulted in the violent incidents of the May 1969 riots. All these made remedial measures complex and thus needed political will and strong tactful leadership and well planned strategies. It was against this series of events that Malaysia's ambitious 'affirmative action' policy was promulgated in 1971, under the title of the New Economic Policy (NEP) under the leadership of Tun Abdul Razak. He was the leader that spearheaded the introduction of the affirmative action policy embodied by the NEP. The NEP was promulgated in conjunction with the 'Second Malaysia Plan 1971-1975 and its main objective was to forge national unity. The targets were:

1. Malays and the other indigenous group referred to as the Bumiputera will own at least 30% of the total commercial and industrial activities in all categories and scale of operations;
2. The creation of a Malay commercial and industrial community by means of deliberate training and human resources development programmes;
3. The employment pattern at all levels and in sectors, particularly the Urban and Rural Sectors must reflect the racial composition of the population; and
4. The establishment of new industrial activities in selected new growth areas.

Rural development and urbanization improved remarkably during this period. Official poverty statistics in rural areas fell from 58.6% in 1970 to 21.1% in 1990. In 1970 there was relatively very high unemployment and poverty and by the 1990 there was significant reduction (Shireen, 1998).

At the start of the NEP programme, the exclusion of Malays from higher education was very evident. At the start of the programme in 1970, the University of Malaya was the only university and by Bumiputera's enrolment was significantly very low and by 1986, there were more universities established and the Bumiputera's enrolment had risen to 54% at the University of Malaya, close to 73% at the National University and 81% at the Agriculture University (Lee, 1994).

The growth in higher education rose significantly in the ranks of the skilled workforce, with Bumiputera making the most gains. The total registered professionals rose from 4.9% to 29.0% in 1990 (Lee, 2007). Overall, Bumiputera's participations in professions had increased. Accountants rose from 4% in 1970 to 28% in 1990 and architects from 4% to 24%, engineers from 7% to 35%, doctors from 4% to 28% (Funston, J 2001).

In 1970, the share capital ownership was unequal, with Bumiputera owning 2.4% and non-Bumiputera holding 32.3% and 63.3% was in foreign interest control. By the 1990, there was a major shift and transformation had taken place; 20.3% Bumiputera,

[5] Over these centuries, the VOC was dominant in the Indonesian region, while the EIC was dominant in Malaysia, starting with Penang (1786), Singapore (1819) and Melaka (1824).

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46.2% non- Bumiputera; and 24.1% foreign interest (Lee, 2007). These results show that that the 20% wealth in the hands of Bumiputera fell short of the intended 30%, but it went a long way in ensuring the reduction of poverty in the population from 50% to 68% (Funston, 2001). The government believed the aim of having 30% equity participation in the hands of Bumiputera' s had yet to be achieved (Malaysian Government, 1991).

Affirmative Action policy in Malaysia under the NEP made considerable advances in the process of restructuring the society in the initial timeframe, 1971-1990. The education and urbanization routes to social mobility and higher income were taken advantage of by many Malays.

b) The United States of America

Throughout its history, The United States has been inhabited by a number of interacting racial or ethnic groups. Historians have asserted that there is not a country in world history in which racism has been more important, for so long a time as the United States. The problem of "colour line" as W.E.B. Du Bois stated[6] still persist up today.[7] There has been important social distinction among those of white or European ancestry, in addition to the obvious "colour line" structuring relationships between dominant whites and lower-status blacks, mainly of African origin, Indians and Asians.

The most influential and durable conception of the relations amongst the racial groups viewed as significantly dissimilar has been hierarchical. The hierarchical model has its origins and most enduring consequences in the conquest of Indians and the slave trade during the colonial period. It also applied to European immigrants who differed in culture and religion from old-stock Americans of British origin. The hierarchical models have always been highly visible in the sharpest and most consequential distinction between "white" and non-white".

The Declaration of Independence of 1776, which is the founding document of the United States declares: "All men are created equal; that they are endowed by the Creator with certain unalienable rights; among these are life'liberty and the pursuit of happiness."Had this document been followed literally, it would have signalled the birth of a nation in which the criteria for equal citizenship regardless of race, colour and gender woul have been membership in the human race[8] The Constitution of the United States, founded in 1789 provided no definition of national citizenship that might have precluded the federation of states from discriminating on the ground of race. The only reference to race in the Constitution is in Article IV, section 2 which states that: "The citizens of each state shall be entitled to the privileges and immunities of citizens in the several States."

The policy of affirmative action in the United States of America originated as a pragmatic response by those in the federal government for the advancement of disadvantaged US citizens by the use of quotas for enforcing employment provisions of the Civil Rights Act of 1964. The policy was aimed in particular at Black American and Hispanic American ethnic groups, who were in the minority. It also took into consideration and covered gender discrimination.[9] It was the result of the civil rights movement of the 1960's which was meant to address the issue of education and employment and that it should be biased towards non-white ethnic groups to overcome the effects of centuries of prejudice against the ethnic minorities. The policy has challenged white – American domination in education, employment and government. The Civil Rights Act of 1964 legislated that any form of discrimination was illegal and established the equal opportunity for all Americans regardless of race, cultural background, colour or religion. This act was the most sweeping civil rights legislation.

The affirmative action policy was implemented by federal agencies enforcing the Civil Rights Act of 1964 and three executive orders, that is, the Executive Order 10925, Executive Order 11246 and the next order to follow under the authority of Executive 11246 was the Revised Philadelphia Plan of 1969, based on an earlier plan of 1967. The policy and especially the use of quotas were challenged in a number of cases in the courts of the United States. The implementation of affirmative action in most cases was left to the discretion of the various organizations in the different sectors of government and industry and many of such programs were challenged in courts of law. The courts made several judicial

[6] DuBois, W.E.B., The Philadelphia Negro, A Social Study, (Schocken Books, New York, first published in 1889, 1967)-This quote was taken from Introduction to the 1967 Edition written by E, DigbyBaltzell, pp xxv.

[7] DuBois was an American civil rights activist, Pan-Africanist, historian, sociologist, author and editor. He rose to prominence for campaigning for increased political representation of blacks in the United States, in order to guarantee civil rights and the formation of a Black Elite for the progress of the African American. He tried virtually every possible solution to the problem of twentieth-century racism-scholarship, propaganda, integration, national self-determination, human rights, cultural and economic separatism, politics, international communism, expatriation, third world solidarity etc. He has been labeled the father of Pan-Africanism.

[8] Women were then generally subsumed under the category of men or man.

[9] Gender relates to the relationship between men and women in society.Historians have tended to forget the discrimination women suffered in the United States. The explorers were men, the landholders and merchant men, the political leaders were men, the military figures men, which led to women is society being invisible. White women because of this invisibility were in the same status as black slaves and this means slave women faced a double oppression. The fact that women were child bearers also resulted in them being pushed backward in society, not taking into consideration those who did not bear children, or too young or too old for that. Their physical characteristics became a convenience for men who exploited these to their advantage, subjugating them to servants, sex mate, companion and bearer-teacher-warden of his children.

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pronouncements in the implementation of affirmative action programs. Substantial jurisprudence has been built by the judiciary in the implementation of the affirmative action program in the United States. From the decided cases, an inference can be drawn that affirmative action is a highly contentious issue in the United States. Examination of the judicial decisions bares testimony of the role the judiciary has played in defining and implementing affirmative action in the United States. The courts have from time to time affirmed that there is constitutional foundation for affirmative action in the United States.

In 1970 President Johnson framed the concept underlying affirmative action in an eloquent speech to the graduating class at Howard University, asserting that civil rights alone are not enough to remedy discrimination:

> "*You do not wipe away the scars of centuries by saying: now, you are free to go where you want, do as you desire and choose the leaders you please. You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, 'you are free to compete with all the others,' and still justly believe you have been completely fair. This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity-not just legal equity but human ability-not just equality as a right and a theory, but equality as a fact and as a result."*

In conclusion, it has been noted by Fredrickson (2008) that the situation of African Americans, because of the application of affirmative action policies, has certainly improved to a certain extent in the last half century. To a much greater extent there is evidence, than in the past, of high achievers rising to positions of power and prestige. To this growing African-American bourgeoisie, the privileges associated with class have overcome the liabilities associated with race to some extent. It is the poorer blacks, confined to the inner-city ghetto from which the middle class has emigrated to more affluent suburbs, who suffer from a double handicap of race and class that is very difficult to overcome. Fredrickson, (2008) further stated that the situation of blacks and other racialised minorities, such as Mexican Americans could all be blamed on past injustices. There had been other contributory factors, such as the partial dismantling of the welfare state in the United States had deprived the poor, who were mainly black and brown, of access to the social citizenship adumbrated by the New Deal[10]. They were the group that continued to suffer discrimination in access to housing, employment, loans, medical care and education. The antidiscrimination laws were either inadequately enforced or failed to cover some of the subtler ways in which racial bias is expressed.

c) Brazil

Race based affirmative action was established for the very first time by several Brazilian institutions in 2001, following the United Nations Conference on Racism in Durban, South Africa.[11] The implementation of such a program represented a major step in Brazil's process of democratization and nation-building which was contrary to the country's long-held ideology of racial democracy (Schwartzman, S 2010). This ideology, which has been held since the 1930's, was of the opinion that racism and racial discrimination were minimal or non-existent in the Brazilian society in contrast to other multiracial societies in the world. By the 1990's as the country democratized and saw the emergent of a small but active black movement denounced the long held popular view of racial democracy, as it alleged that racism was widespread and evidence was produced of official statistics showing Brazil's tremendous racial inequality.

The ideology of non-racism in Brazil has led to the social and economic exclusion of members of a certain racial group.[12] Research has shown that in Brazil whites earn 57 percent more than blacks with the same levels of education, whites also attend an average of two years more school than blacks and more than 90 percent of the country's diplomats and judges are white.[13]These inequalities exist despite the country's constitutional prohibition on racial discrimination. The Constitution of Brazil also guarantees equal access to education. It mandates that the country aims to "promote the well-being of all, without prejudice as to origin, race, sex, colour, age and any other forms of discrimination.'[14]The country's constitution further provides that international treaties have the force of law, and specifies that "The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the international treaties in which the Federative Republic of Brazil is a party."[15] In conformity to this constitutiona obligation, Brazil has ratified The International Convention

[10] The New Deal was a series of economic programs enacted by the US Congress from 1933 to 1938 during the first term of President Franklin Roosevelt. They were a response to the Great Depression and were passed to provide relief for the unemployed and poor, recovery of the economy to normal levels and reform of the financial systems to prevent another depression occurring. Most historians refer to them as the three "R's", that it relief, recovery and reform.

[11] The Durban Conference was the most comprehensive discussion undertaken by the international community concerning "Racism, Racial Discrimination, Xenophobia and Related Intolerance" and resulted in the Brazilian government making international commitments following the recommendations of the Conference

[12] Committee on the Elimination of Racial Discrimination, Reports submitted by States Parties under Article 9 of the Convention, CERD/C/431/Add.8,16 October 2003.

[13] See id

[14] Brazil Constitution,1988, Art 3(IV).

[15] Brazil Constitution,1988, Art 208(V).

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on the Elimination of Racial Discrimination (ICERD), The International Covenant on Civil and Political Rights (ICCPR),The International Covenant on Economic, Social and Cultural Rights (ICESCR) and The Committee on the Elimination of Discrimination Against Women (CEDAW). The government further to this, in May 2003, established a new ministry called the "Special Secretariat for Devising Policies for the Promotion of Racial Equality."[16]

The economy of Brazil was based on agriculture and mining from the 16th through to the 19th century and depended on a large African-origin slave population. In a period of more than 300 years of slavery, the country was the world's largest importer of African slaves, which resulted in Brazil importing seven times as many African slaves to the country compared to the United States.[17] In 1888, Brazil became the last country in the Americas to abolish slavery, and by then had a population of mostly black and mixed-race. The abolishing of slavery and its past consequences did not create a change in the country's racial inequality or the beliefs about black people. Throughout much of its history, Brazil's miscegenation and the fluidity of racial classification has largely been used as proof of its racial democracy.[18]

The absence of classificatory laws and high rate miscegenation in Brazil resulted in a racial continuum with racial categories from black to white and passing on to intermediate colours that are quite mixed. This has resulted in some Brazilian's racial classification being ambiguous, in some instances varying according to the classifier and the social context.

Most Brazilians have come to acknowledge now that there is racial prejudice and discrimination in their country. Research and statistical analysis of census and surveys have highlighted evidence that racial inequality and racial discrimination exists in the labour market and other spheres of Brazilian society. Research has shown that on average, black and brown (mulatto and mixed race) Brazilians earn half of the income as compared to white Brazilians, despite the historical and contemporary absence of race-based laws.

In Brazil, the people in need for advancement are the Afro-Brazilian, who are poor and the working class as research has it that the middle class and the elite is almost entirely white.[19]The absence of Afro-Brazilians in the middle and the elite of society are closely related to their poor representation in Brazilian universities. The government realized that if this was not addressed, it represented a well-known melting pot of problems to come in the future. Until the implementation of affirmative action in 2001, non-white Brazilians were rarely found in Brazil's top universities. It was because of this that university admissions were found to be the most appropriate place for race-conscious affirmative action.[20] Race based affirmative action policy was established and the result of this is that by 2008, roughly 50 Brazilians universities adopted this policy to address the issue of racial inequality. For the first time in Brazilian societies affirmative action policies brought the issue of racism to be openly discussed and debated when all along there had been very little formal discussion of race, while other societies like the United States and South Africa were viewed to be obsessed with race and racial difference.

Affirmative action policy in Brazil has mandated many leading universities to admit a fixed percentage of non-white students and others use a point system that awards additional points to Afro-Brazilian students.[21] The absence of Afro-Brazilians in the middle and the elite of society are closely related to their poor representation in Brazilian universities. The government realized that if this was not addressed, it represented a well known melting pot of problems to come in the future. Affirmative action policy in Brazil has mandated many leading universities

[16] Brazil Constitution, 1988, Art 5(LXXVII)(2).

[17] By the time Brazil ended slavery in 1888, the population was already colourful: 37% white, 44% brown and 19% black. It is estimated that today those with African origins make up almost 60% of Brazil's population- Wilson G, The Effect of Legal Tradition on Affirmative Action in the U.S. and Brazil.<http:www.garretwilson.com/essays/law/brazilaffirmativeaction.html.

[18] During slavery and colonialism, Brazil experienced greater miscegenation or race mixture as compared to the United States because its European settlers were mostly male of Portuguese origin in contrast to the family oriented colonization in North America and as result they sought out female mates among the African slaves, indigenous and mulatto population. In Brazil as compared to the United States or South Africa, there were no anti-miscegenation laws and they have prided themselves for this.

[19] This has anthropological roots dating back to the days of slavery, when the first law in regard to ownership of land was enacted, 'Lei de Terras"(Law of Lands passed in 1850) which excluded slaves and their descendants from land ownership as they were not viewed as Brazilians, and thus denied citizenship. If slaves had access to ownership of land, they could have been competition with white farmers and thus their economic status elevated. The economist and sociologist Marcelo Paixao, from the Universida de Federa do Rio de Janeiro did a lot of research proving that the colour of poverty in Brazil is black. This information is published in his dissertation with accompanying data proving to this effect (Ramos, I.,2006).

[20] Brazilian universities have in the past depended on a standardized test, known as the vestibular. This is a competitive entrance examination and is the primary and widespread system used by Brazilian universities. The term vestibular comes from the word "vestibular" which means entrance hall in Portuguese. The original reason for its introduction was a way to prevent nepotism or other form of unfair or beneficial selection of candidates. Until 1996 when the New Education Law was passed, it was by law considered as the only authorized selection method. In 2000 and 2001, the Rio de Janeiro state legislature passed laws mandating that two public universities under its jurisdiction reserve 50 percent of their admissions intake for applicants from public school, 40 percent for students who identified themselves as black or pardo (mixed race) and 10 percent for students with disabilities. The first intake of these students under the quota system which implementation began in 2002 were admitted in universities in 2003.

[21] In 2005, the combative chancellor in favour of the system, Naomar de Almeida Filho of the Universidade Federal da Bahia-UFBA supported by other academics showed for the first time that year that the percentage of black students which was 73.4% is very close to the percentage of the university's black population.

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to admit a fixed percentage of non-white students and others use a point system that awards additional points to Afro-Brazilian students.

Quotas system has also been introduced for indigenous people, for the disabled and those who come from poorly funded public schools. Like in any country where affirmative action has been introduced, there are many controversies that surround the policy. In Brazil even though some people acknowledge that the quotas are an imperfect tool and that the solution really is to expand education opportunities to accommodate people who are otherwise disadvantaged, that is Brazilians, both black and white. To achieve redress, the process has to start from somewhere.

In conclusion, racial equality policies are now at the centre of the government of Brazil's agenda and their effects are evident, even though affirmative action policy is relatively new. Former President LuizInacio Lula da Silva, who was a former metalworker and trade unionist, chose a cabinet that includes four blacks, including one in the most recent created position of Secretary for the promotion of Racial Equality.[22] In 2003 he established a National Policy for the Promotion of Racial Equality which established quotas for certain jobs.

d) New Zealand

Affirmative action in New Zealand has long been a public policy tool and has been specifically authorized by legislation since 1977.[23] Affirmative action in New Zealand is two pronged: First, it has been used to justify the hiring and promotion of women;[24] second, it has been used as a justification for special educational measures being provided for Maori and Pacific Island students.

In New Zealand, there are two different laws, with two different standards governing affirmative action. These laws are the: The New Zealand Bill of Rights Act 1990 (BORA) and the Human Rights Act 1993. This New Zealand Bill of Rights Act provides a wide range of broadly worded rights, including freedom from discrimination. The overall exception for limiting these rights is in Section 5 of the Act: "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The Act is applicable to all spheres of government, that is, the legislature, executive and judiciary. It is also applicable to other persons or bodies exercising any "public function, power, or duty conferred or imposed on them by or pursuant to law." Section 19(1) provides that:" Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993."

This Human Rights Act addresses the issue of discrimination only. It applies to all citizens of the country. The Act applies to employment matters even to those covered by BORA[25]. Section 21 outlines the grounds of discrimination, which are sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.

The affirmative action measures are governed ostensibly by different regimes under these two Acts. Mere differential treatment is prima facie unlawful under the Human Rights Act. Under this Act it does not need to be adverse discrimination to be unlawful. Affirmative Action is legalized through an explicit exception in this Act. Section 73 provides for measures to ensure equality and states:

(i) Anything (…) which would otherwise constitute a breach of (…) this Act shall not constitute a breach if-

a) *It is done or omitted in good faith for the purpose of assisting or advancing persons or groups of persons, being in each case persons against whom discrimination is unlawful by virtue of the Par of this Act; and*
b) *Those persons or groups need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place with other members of the community.*

In regard to affirmative action, Paragraph (b) is most relevant. Evidence is needed that the group in question may need assistance in order to achieve an equal place with others (of the community). Even though "Community" is not defined in the Act, it is taken that for employment matters, it would be the community of relevant employees. In the case of:

Amaltal Fishing Co Ltd v Nelson Polytechnic (No 1)(1994) 1 HRNZ 369; Amaltal Fishing Co Ltd v Nelson Polytechnic (No2) (1996) 2 HRNZ 225.

In this case, the Polytechnic had set aside all its 14 places in the fisheries training course for Maori applicants. Evidence was required to have been led in terms of Section 73 that Maori community needed or may reasonably need assistance or advancement in order to achieve equal place with other members of the

[22] Global Rights: Partners for Justice, Latin America Program, Affirmative Action Affinity Group, Policy Updates-Brazil, July 2003-April 2004.

[23] The Human Rights Commission Act 1977 gave legislative power to the Commission to approve such special plans to ensure the advancement of women and all were for education or training. The purpose as advanced by the Human Rights Commissioner was to achieve equality of outcome.

[24] It is actually surprising that in 1893, New Zealand was the first country in the world to give women the right to vote and that is a quarter of a century before Britain or the USA. Under the leadership of the Prime Minister and leader of the Labour Party then, Richard "King Dick" Seddon, pioneering systems such as old age pensions, minimum wage requirements and children's health services were implemented making New Zealand a world leader in social welfare.

[25] In Part II of the Act, there are approximately 53 sections detailing what is and what is not allowed in terms of discrimination. It also sets up the Human Rights Commission and the complaints procedures.

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community. It was the reasonableness of the measure that of dedicating all available places in the course that was never advanced and non-Maori complainant disputed.

The Bill of Rights Act also regards affirmative action measures as remedial measures for those disadvantaged by discrimination, in a more in-depth way that the Human Rights Act does. The relevant section is s 19 which provides:

Freedom from discrimination

1) *Everyone has the right to freedom from discrimination; and*
2) *Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of the Human Rights Act do not constitute discrimination.*

It is clear that subsection 19(2) was inserted in order to make it clear that affirmative action programs would not constitute discrimination. It is clear that this subsection applies to programs to assist persons suffering from actual past unlawful discrimination. It does not apply to those who simply may reasonably be supposed to need assistance or advancement. Under section 19, it will be easier to prove that unlawful discrimination has occurred on the grounds of race than for sex or for other reasons It is for this reason the two Acts must be read together as they are different views on the meaning of discrimination[26].

The huge challenge in New Zealand in regard to affirmative action is that both Acts discussed above that are most relevant to the implementation of affirmative action do not define what "discrimination" is. The question how this affects the consideration of affirmative action measures is unclear and will depend on the approach adopted by a New Zealand court to the meaning of 'discrimination" in BORA.

In conclusion, the law of affirmative action in New Zealand needs clarifying. To justify affirmative action measures in New Zealand will depend on the legislation that it falls under: whether that is section 19 of BORA or section 73 of the Human Rights Act. Justification of measures to be taken for affirmative action if a situation is covered by the BORA will depend upon the approach taken to the interpretation of "discrimination". The interpretation to be used could be formal or substantive and will affect how much scope there is for operation of the justification in subsection 19(2) and in section 5. If the United States model is favoured then different tests will be adopted for different types of discrimination. The result will then depend upon the ground of discrimination alleged: whether it is on the basis of race or gender, for example. Evidence will need to be supplied of the disadvantaged suffered by the target group seeking the adoption of any affirmative action measures. What then follows is the careful definition of the target group and also the disadvantage to be remedied will be carefully defined. In terms of the Human Rights Act, the disadvantage to be remedied need not have been actually suffered by a particular person or group wishing to take advantage of the remedy. The test in this case that needs to be applied is whether they "may reasonably be supposed to need assistance or advancement". In contrast, in terms of the BORA section 19(2), affirmative action is designed to assist persons or groups of persons actually disadvantaged by unlawful discrimination. Under the Treaty of Waitangi, the role of consideration must be considered to invoke affirmative action measures.

II. Observations and Analysis

Comparisons involving the United States, Malaysia, Brazil, and New Zealand had to rest on three pillars. First, all of these societies were as a result of European expansion and subsequent colonization of the non-Western world around 1500. The English, the Dutch and the Portuguese established colonies that displaced, marginalised or subordinated indigenous people. Second, each of these colonies imported non-European slaves or other race groups to meet the demand for labour that the settlers found they were in need of as a result of the indigenous groups being unable or unwilling or deemed unsuitable. A master-servant relationship between settlers and indigenous people was created. Third, each of these colonies applied a divide and rule strategy, in which the different races were separated by race, economic, social and political status. In the United States, Brazil and New Zealand a colour code developed at a very early age to determine status. In all these countries, society's ethnic hierarchy was established by the colonial state and the original white settlers who would continue to exist long after these states became independent, after the abolition of slavery or after self-determination.

From country to country, significant variations had been found in the way racial groups were defined and how their subordination was justified. Significant variations were also evident in the nature and rigidity of the racial order and in the way historical developments or changing conditions adjusted, strengthened or weakened the primary hierarchies. In the current comparison of race and ethnicity, there was one dominant assumption: race was a social and cultural construction and not a fact of nature. What was evident in these case studies was that the legacy of discrimination and attitudes to race was difficult, if not impossible to overcome or fully transcend when racial orders were being reconstructed or reinvented. Historical burdens inherited on the issue of race could be

[26] Richworth and others, The New Zealand Bill of Rights,Melbourne, Oxford University Press, 2003).

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lightened, but it would be Utopian to think that it could be entirely eliminated.

Malaysia's affirmative action policies were the most comprehensive of these case studies. In Malaysia, the policies were designed to protect the interest of the social and economically disadvantaged Malay majority against the Chinese minority which was more dynamic and much wealthier. These policies had a more unmistakable ethnic content. In the United States, the affirmative action policies had a more race and gender content as they were designed to protect the interest of the African and Mexican Americans and women in general. The United States affirmative policies had a restricted scope; they focused on university admissions and employment equity only. They were designed to provide preferential support more to the African Americans who were of slave descent and Jim Crows laws, which were specifically designed to suppress people of colour in the United States. In Brazil, The situation was more race based as it was more geared toward the advancement of the Brazilian of African descent. In addition, there was a requirement for photographic evidence as proof that the people definitely fell within the designated group for remedial actions. In New Zealand, the distinctive feature of the country's reservation policies was their focus on evidence needed for the disadvantages to be remedied. The target group for remedial action would have to be explicitly defined, as would the disadvantage to be remedied. Research in New Zealand showed despite the affirmative action measures regarding the Maori and that they enjoyed some measure of advancement, the reality was that significant socio-economic gaps still existed between the Maoris and non-Maoris, in terms of education, health, income and labour market status. The broad-based policies geared towards the Maori community which had gone a long way in closing the gaps (such as fisheries settlement, other treaty settlements etc.) risked the major beneficiaries being the considerable number of Maoris already empowered by virtue of having jobs, skills, high income and good prospects. [27]

A common feature of the lessons learnt from the affirmative action policies in the four countries was that these policies were all intended to be temporary features of social engineering programs. In all these countries, they developed vested interests with a strong political will which prevented their abolition, even where they had proven to patently harmful to a country's social harmony and economic advancement or where the original circumstances which justified their introduction had long since changed for the better and could no longer be used to justify the perpetuation of such policies.

Another common feature regarding these Policies was that they often changed in character in the course of time. Affirmative action was not a cure-all. It would not eliminate racial discrimination, nor would it do away with competition for scarce resources. What cannot be disputed in this paper was that affirmative action could ensure that everyone had a fair chance once the playing field had been levelled to the economic resources available in societies. Even in a case of past discrimination not being a factor, a recipient in administering a program could take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular ethnic group, race, colour or national origin. The common feature that had been highlighted in this paper was that, in most cases, as in Malaysia and the United States, affirmative action policies' main aim had been to seek to uplift race groups. However, in New Zealand and the United States, historical disadvantage in principle also applied to women and the disabled.

Another common lesson that had been highlighted by these comparative analyses was that all these countries had implemented some of the world's most progressive, sustained and successful founding documents and legislations for rendering reparative justice[28], for example, the Constitution had proved inadequate in remedying the intertwined problems of economic inequality and chronic poverty of the previously disadvantaged people of these countries. All needed distributive instruments, namely targeted policies, to embark on a process of levelling the social and economic playing field.[29]

Malaysia constituted a useful example on how much policy makers could learn and how best policies could be managed, from other countries' experiences of affirmative action. What the analysis showed was that affirmative action in other countries had been an attempt to redress the historical disadvantage suffered by minorities of the population. Malaysia is similar to South Africa in that, the affirmative action program was the result of a demographically and. politically dominant, but economically disadvantaged majority of the population. The affirmative action program was launched as a measure to level the playing field and to advance the majority's economic position. Malaysia also had a similar

[27] This argument had been advanced by Simon Chapple in a Labour Markets Bulletin of New Zealand. Throughout the 20th century, substantial absolute and relative socio-economic gaps still existed in most areas of the socioeconomic sectors.

[28] Reparative justice was applied to breached rights to property caused by dispossession in most cases.

[29] In all these countries, the introduction of affirmative action program had a significant effect on the changing educational demographics, increasing the number of the previously marginalized in universities through a strict set aside system that provided for the admissions and subsequent hiring, thus leveling their economic participation. In all these countries the affirmative action policies had not been without their critics, but despite all this, it remained clear that they were often critically needed to make real any promises of equality.

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level of economic development to South Africa which countered the argument that affirmative action was a luxury that only rich countries could really afford. The Malaysian case study demonstrated that affirmative action was not the reserve of the rich countries and that developing countries could also undertake such action, as long as there was economic advancement and opportunities for all are being created.

III. Conclusion

In all the countries researched in this paper, the conclusion is that effective transformation policies needed to be enforced, strong incentives provided and good monitoring introduced to ensure the desired outcome is obtained. It was also observed that low-skilled citizens without work and living in high density areas were empowered to acquire better socio-economic outcomes. The one paramount lesson learnt from the comparative analyses was that implementation of affirmative action policies was a process and not an event. It required long-term plans to be effective and for its impact to be felt in a country.[30]

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[30] In all these countries the preliminary effects of affirmative action could be noted, e.g. in Malaysia the impact of the NEP could be seen in the number of Malays driving in the streets of Kaula Lumpar in luxurious cars, even though in the 20 years of its implementation the set targets to redress the past had not been achieved. In Brazil many of the students admitted in accordance with the quota system remained unable to attend school due to a lack of financial resources and a dearth of scholarships' funds -Global Rights Partners for Justice-Affirmative Action, A Global Perspective. 2005.

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