

Lessons on affirmative action: a comparative study in South Africa, Malaysia and Canada

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Executive summary

Creating equal opportunities and equity in the area of employment is a challenging policy decisions for all nations. In trying to address inequality in the labour market, some countries have chosen to adopt “positive discrimination” measures, otherwise referred to as affirmative action. Yet, years after their implementation, the measures are the target of enduring objections. Critics argue that the model provides unfair opportunities for a selected group, stressing market inequalities while supporters relentlessly point out the need for such measures in remedying past discrimination. In a first time, the study provides a set of definitions surrounding the measures as well as and overview of international and regional interpretations of affirmative action. Further arguments for and against the implementation are discussed. The second part of the research provides and in-depth analysis of how affirmative action is understood at national level in three different countries: Canada, South Africa and Malaysia. Having compared the three methods of implementation, the study analyses labour market changes incurred by the adoption of such policies in the three countries. The study finds more encouraging labour market results in Canada and Malaysia but denotes adverse spill over effects of these policies in all countries. The research notes that affirmative action measures have been necessary in addressing numerical representation issues. However, more than 20 years after their implementation, the measures need to be readjusted to provide a more holistic approach, addressing issues of intra-ethnic income disparities, upward class mobility as well as training and skills development. Throughout the study, insight is provided on an alternative human resource technique to affirmative action: diversity management. While diversity management has largely been adopted across companies in Canada, the model is still in its infancy in South Africa and Malaysia. Some general guidelines for successful implementation are provided.

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List of abbreviations

BEE: Black Economic Empowerment

EEA: Employment Equity Act

ECJ: European Court of Justice

FCP: Federal Constructors Program

HR: Human Resource

LEEP: Legislated Employment Equity Program

SETA: Sector Education and Training Authorities

US: United States of America

NEP: New Economic Policy

Introduction

Affirmative action can be defined as a “*range of governmental and private initiatives that offer preferential treatment to members of designated racial or ethnic groups ... usually as a means of compensating them for the effects of past and present discrimination*”¹. This perspective advocates a proactive approach in ensuring that distribution is fair across society, notably in the labour market. Affirmative action measures call for different treatment for different people, building on the idea that not addressing these inequalities will only deepen their existence². Assuming that talent is equally distributed across groups, imbalances in the market outcomes are seen as reflective of discriminatory structures, hampering the normal development of particular groups³.

The most prominent example of affirmative action implementation is perhaps that of South Africa, which has since 1994 embarked in a series of affirmative action programs designed to remedy the inequalities leftover by the Apartheid system⁴. In May 1969, uprisings in Malaysia forced the authorities into rapidly expanding such measures in favour of the Bumiputera populations, “*sons of the soil*” which had been traditionally confined in less developed rural areas, with little access to education and job opportunities⁵. Starting 1971, the New Economic Policy has sought to improve Bumiputera representation in both upper level occupations and higher education institutions. Years after their implementation, the measures are the target of enduring criticism. Recently, taking on the case of South Africa, both the Economist (2013)⁶ and the Guardian (2015) deplore the widening wage gaps, pointing out that while affirmative action measures have indeed profited a minority of the population, economic inequality has consistently increased. They estimate around 60 to 65% of the total wealth to be detained by only 10% of the population⁷. In 2017, similar criticisms are directed towards the Malayan schemes, accused of favouring a minority of better off Bumiputera and failing to address the needs of “poor” Malays⁸.

¹ Swain, C. (2004). The new white nationalism in America. Cambridge, UK: Cambridge University Press

² Christopher McCrudden, C. (2011). A Comparative Taxonomy of Positive Action and Affirmative Action Policies. Queen's University Belfast Law Research Paper No. 12-04, pp.1-23.

³ International Labour Office Geneva (2005). Affirmative Action for Racial Equality: Features, impact and challenges. In Focus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work. pp.1-45.

⁴ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

⁵ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. Journal of Contemporary Asia, 42(2), pp.230-254.

⁶ Economist.com. (2013). 'Black Economic empowerment has not worked well nor will it end soon.' [online] Available at: <http://www.economist.com/news/briefing/21576655-black-economic-empowerment-has-not-worked-well-nor-will-it-end-soon-fools-gold>

⁷ the Guardian. (2015). 'Black economic empowerment has failed': Piketty on South African inequality. [online] Available at: <https://www.theguardian.com/world/2015/oct/06/piketty-south-africa-inequality-nelson-mandela-lecture>

⁸ Economist.com. (2017). Race-based affirmative action is failing poor Malaysians [online] Available at: <http://www.economist.com/news/briefing/21576654-elections-may-could-mark-turning-point-never-ending-policy>

Having originated in the United States, affirmative action measures have often led to complex debates in the country, primarily on the issue of access to education⁹. Recent headlines have for the most part saluted the decision of the Supreme Court, which has upheld the legality of affirmative action in the *Fisher v. University of Texas*¹⁰ case. The complaint against the University of Texas came from Abigail Fisher, a white student, who claimed that she had been denied admission on the basis of her race. The Court has however rejected the complaint towards the “*race-consciousness admission program*”, allowing the University of Texas to continue the use of race as part of the criteria in their selections process¹¹. The American model of affirmative action, notably in terms of access to higher education has inspired other countries such as Brazil into adopting similar measures¹². The decision of the court is a substantial win for affirmative action advocates at a time where an increasing number of voices call for the suppression of these measures¹³.

Along with its increasingly pluralistic workforce and various Aboriginal populations, Canada has been quick to recognise the need for compressive methods addressing the position of these minorities¹⁴. Distancing themselves from the American model, they adopt employment equity measures, backed up by the Employment Equity Act (1985)¹⁵.

The current debate regarding AA is fuelled by the polar attitudes regarding these practices. At one end of the spectrum the advocates of the model argue that AA, by reducing economic inequality and increasing interaction between groups further advances the right of historically disadvantaged groups. On the other hand, critics accuse the model of being a form of *reserve discrimination*, generating unfair preferential treatment for certain groups, undermining overall market efficiency and stressing inequalities¹⁶. So does affirmative action work?

For the purpose of this the research, the measures implemented in both South Africa and Malaysia will be compared against the Canadian model. South Africa and Malaysia provide grounds for comparison as they both seek to remedy hereditary disadvantages encountered by an ethnic groups representative of the majority of the population. Similarly, Canada seeks to remedy the position of visible minorities¹⁷ in its labour market. As the primary focus of the research is the use of affirmative action in the labour market, the Canadian employment equity model, as well as its accompanying measures constitute a prime example. Further, the Canadian Federal

⁹ Klarsfeld, A., Booyesen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;

¹⁰ Fisher v. University of Texas, No. 14-981, Supreme Court rulling June 23, 2016

¹¹ Liptak, A. (2016). Supreme Court Upholds Affirmative Action Program at University of Texas. [online] Nytimes.com. Available at: <https://www.nytimes.com/2016/06/24/us/politics/supreme-court-affirmative-action-university-of-texas.html>

¹² BBC News. (2013). Brazil's universities take affirmative action - BBC News. [online] Available at: <http://www.bbc.com/news/business-23862676>

¹³ Economist.com. (2013). *Time to scap affirmative action* Available at: <http://www.economist.com/news/leaders/21576662-governments-should-be-colour-blind-time-scap-affirmative-action>

¹⁴ Idem

¹⁵ Employment Equity Act 1986, amended 1995

¹⁶ International Labour Office Geneva (2005). Affirmative Action for Racial Equality: Features, impact and challenges. InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work. pp.1-45.

¹⁷ Also included women, people with disabilities and aboriginal populations

Employment Equity Act of 1986 has been useful in modelling the Employment Equity Act (Republic of South Africa, 1998), with both countries having a similar approach¹⁸. In order to form a global opinion on the matter, the research will assess the use of affirmative action as a tool for redressing inequity across different contexts and economic development levels. As part of the research the following questions will be addressed: From a comparative perspective, what lessons can be drawn on the use of affirmative action in South Africa, Malaysia and Canada? In which way did these measures affect ethnic parity in the labour market? Alternatively, can human resource practices play a role in achieving these goals? What are the implications for future policy markers?

The first part of the study will cover the concept of affirmative action as presented by academic literature. Following the literature review on the subject matter, a study on affirmative action implementation will be conducted among the selected countries (South Africa, Malaysia, Canada). The study will cover legal topics such as the implementation into national legislation of affirmative action measures but will also elaborate on the emergence of human resource practices designed in response to the increasing diversity among the workforce. While affirmative action measures are primarily implemented under the initiative of national legislation, diversity management is a managerial practice, implemented in line with enterprise strategy.¹⁹ The research will seek to address the implementation of affirmative action and diversity management measures in the public as well as the private sectors across the selected countries. Building on both the findings extracted from the literature review as well as the country case study, the final part of the research will compare modes of implementation and analyse the efficiency of affirmative action as a tool of redressing inequity in the labour market. The efficiency of these measures implemented will be tested against the evolution of indicators such as unemployment in the designated groups, occupational status and average income. The findings of the study will then be used to address implications for policy makers and formulate recommendations on the use of affirmative action.

¹⁸ Thomas, A. and Jain, H. (2004). Employment equity in Canada and South Africa: progress and propositions. *The International Journal of Human Resource Management*, 15(1), pp.36-55.

¹⁹ Combs, G., Nadkarni, S. and Combs, M. (2005). Implementing Affirmative Action Plans in Multinational Corporations. *Organizational Dynamics*, 34(4), pp.346-360.

PART I: AFFIRMATIVE ACTION

1.1 Definitions

An initial complexity in conducting a study on “affirmative action” relies in the multitude of definitions, terms and interpretations employed in describing this area of study. Generally speaking, the research will understand affirmative actions as being a *“range of governmental and private initiatives that offer preferential treatment to members of designated racial or ethnic groups ... usually as a means of compensating them for the effects of past and present discrimination”*²⁰. A further definition understands affirmative action as consisting of *“proportionate measures undertaken with the purpose of achieving full and effective equality in practice for members of groups that are socially or economically disadvantaged, or otherwise face the consequences of past or present discrimination or disadvantage”*²¹. Here, the distinction can be made between *affirmative action* and *equal opportunity* in that equal opportunity is a policy destined to remedy discrimination while affirmative action measures constitute a *proactive* approach designed to avert discrimination.²² The study will understand affirmative action as being concerned with: (a) compensating for past or on-going discrimination, (b) promoting substantive equality and (c) redressing under-representation and reinforcing diversity²³.

1.1.1 International, regional and national interpretations

While international treaties do not directly reference affirmative action, the concept is generally referred to as “special measures”²⁴. In a report on the practices of affirmative action, the Economic and Social Council of the United Nation describes the measures as being *“temporary”* and *“aimed at correcting conditions that impair the enjoyment of equal rights”*²⁵. A further legal basis for affirmative action in international labour law can be found in Art.5 of the Discrimination (Employment and Occupation) Convention (n.111) outlined by the International Labour Organisation²⁶. The article allows for the introduction of *“special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or*

²⁰ Swain, C. (2004). The new white nationalism in America. Cambridge, UK: Cambridge University Press

²¹ Archibong, U. (2009). International perspectives on positive action measures. Centre for Inclusion and Diversity, University of Bradford, European Roma Rights Centre and Ludwig Boltzmann Institute of Human Rights.

²² Crosby, F. (1994). Understanding Affirmative Action. Basic and Applied Social Psychology, 15(1), pp.13-41.

²³ Archibong, U. (2009). International perspectives on positive action measures. Centre for Inclusion and Diversity, University of Bradford, European Roma Rights Centre and Ludwig Boltzmann Institute of Human Rights.

²⁴ UN Economic and Social Council, ‘Comprehensive Examination of Thematic Issues Relating to Racial Discrimination’ (19 June 2000) E/CN.4/Sub.2/2000/11

²⁵ Idem

²⁶ International Labour Organization (ILO), Discrimination (Employment and Occupation) Convention, C111, 25 June 1958, art.5

*social or cultural status, are generally recognized to require special protection or assistance*²⁷. The article further specifies that such measures should not be considered a form of discrimination²⁸.

At regional level, European Community law had at first solely addressed the issue of non-discrimination with regard to gender, as incorporated in Article 13 of the EC Treaty²⁹. The Community has since adopted two new measures, the Racial Equality³⁰ and Employment Equality³¹ Directive, which provide European law with measures for combating discrimination on grounds of “*sex, racial and ethnic origin, religion or belief, sexual orientation, age and disability*”³².

The initial Gender Equal Treatment Directive³³ provided a specific mention on the use of affirmative action by specifying that the directive should “*be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women’s opportunities*”. While this article has since been amended, the provision is representative of the European approach to positive action, whereby Member States as well as other parties are permitted to adopt affirmative action measures, with the choice of not implementing such measures being left at their discretion³⁴. Over the years, the Court was willing to allow the use of affirmative action measures. This was notably the issue in the *Kalanke* case³⁵, where the court accepted the reservation of training places in favour of women³⁶. However it is unclear to which extent this type of decision would be upheld in the case such a selection would be imposed based on of ethnic origin. The lack of case law regarding the new Racial Equality directive implicates that the position of the European Union on this is matter remains unclear³⁷.

On a national level, interpretations of affirmative action, while often inspired by the early American model, differ greatly in scope and nature. National level implementations in the countries of reference will be detailed in Part II.

²⁷ Idem

²⁸ The measures provided by the Convention have a particular emphasis on the elimination of discrimination in employment.

²⁹ Treaty establishing the European Community (Nice consolidated version 1999) - Part One: Principles - Article 13

³⁰ Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000)

³¹ Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (2000)

³² Directive 2000/43/EC and Directive 2000/78/EC

³³ Directive 76/207/EEC Equal treatment in employment, vocational training and working conditions (amended in 2002).

³⁴ Archibong, U. (2009). International perspectives on positive action measures. Centre for Inclusion and Diversity, University of Bradford, European Roma Rights Centre and Ludwig Boltzmann Institute of Human Rights.

³⁵ European Court of Justice, (1995) C-450/93, *Kalanke*

³⁶ 50% of places were reserved for women, including the requirement that 50% of candidates selected for interviews be women.

³⁷ Archibong, U. (2009). International perspectives on positive action measures. Centre for Inclusion and Diversity, University of Bradford, European Roma Rights Centre and Ludwig Boltzmann Institute of Human Rights.

1.1.2 Designed groups

In developing affirmative action programs, policy makers are also in charge of defining the beneficiary group, otherwise called *target* or *preferred group*. The distinction is made with regard to the proportion of the population that constitutes the *designed group*. In some jurisdictions, the beneficiary group can be a minority such as is for example the case in the United States or Canada while in other cases affirmative action is intended to benefit a majority of the population. This is notably the case in Malaysia and South Africa.

A further issue in selecting the designed group is that of dealing with aboriginal population. The notion of implementing affirmative action for aboriginal groups is sensitive, as these groups often do not wish to be associated with the other preferred groups (women, minorities, disabled persons) due to their past dominant position (as occupants of the territory)³⁸. When dealing with aboriginal populations, it is likely that the measures implemented will be characterised by transfers of goods such as lands and properties, over which the aboriginal populations will be granted a certain degree of sovereignty³⁹.

Once the target group has been defined, membership is usually determined using one of two methods. The first method relies on self-identification. In this case, an individual claims that he or she belongs to the beneficiary group and this claim is further examined by the competent authorities. Alternatively, membership can be pre-determined by the authorities on the basis of individual characteristics. They then grant this status to the selected individuals⁴⁰. In India, the authorities have made a further distinction in order to ensure that those at the top of the target group (persons that have the best economic well-being among the “backward cases” targeted by affirmative action programs) would not benefit from the preferential treatment⁴¹. The Indian case is an exception in that it involves means testing while other countries such as Malaysia, Canada, or the United States make no distinction once a person has been identified as belonging to the target group.

1.1.3 Symmetrical and asymmetrical implementations

Affirmative action measures can be implemented in either a symmetrical or asymmetrical manner. Asymmetrical targeting means that a measure will for example benefit women but not men, or a certain ethnicity but not the rest of the population⁴². This is the case in most jurisdictions, for example in Canada the employment equity legislation specifically targets women, disabled workers, visible minorities and aboriginal populations. On the other hand, European legislation, allows for affirmative action measures to be used symmetrically (for example benefit both women and men on the basis of non-discrimination). However, in practice it is usually applied to benefit traditional target groups (e.g. women). A practical example of a symmetrical program can be found in

³⁸ McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. International Encyclopaedia of the Social & Behavioural Sciences. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255

³⁹ Idem

⁴⁰ Christopher McCrudden, C. (2011). A Comparative Taxonomy of Positive Action and Affirmative Action Policies. Queen's University Belfast Law Research Paper No. 12-04, pp.1-23.

⁴¹ Idem

⁴² Idem

Northern Ireland where the measures target the underrepresentation of both Catholics and Protestants if they are identified as being a minority in a particular workplace⁴³.

1.1.4 Areas of affirmative action

Affirmative action can be enacted in many different sectors. In employment, affirmative action concerns measures intended at improving the participation of the target groups. This is for example done at the pre-employment stage by encouraging applications in industries where the group might be underrepresented⁴⁴. Varying from country to country, affirmative action in employment might concern solely the public sector, the public sector as well as public contractors, or expand to include the private sector.

A growing trend in the use of affirmative actions is the adoption of such measures in political representation, notably in improving the representation of women. For example, the French “parité” system requires that the list of candidates presented by political parties have a proportional number of women⁴⁵. Another popular use of affirmative action is in education, whether this is primary, secondary or tertiary education. Measures include reservations for the preferred group, providing grants for education to the target group or redefining admission criteria to include the characteristics of the preferred group. More “neutral” measures can be implemented in attaining the same objective, as was for example the case at the University of Texas. The University granted admission to the top 10% of students from every high school in the State. Because of the highly segregated system high-school system, this has ultimately increased the number of students from black and Hispanic descent⁴⁶.

In terms of public procurement, countries such as Canada or Malaysia have adopted affirmative action measures, by giving preference to enterprises owned or controlled by members of the target group⁴⁷. Other than providing preference for contracting, some jurisdictions have sought to improve the state of corporation ownership among the designed groups. This was for example the case in South Africa, where the government has sought to transfer corporate ownership to black populations, but also in Malaysia where Malays are to be represented on the boards of companies that are being privatized⁴⁸. Other jurisdictions have sought to remedy for past discrimination by redistributing land or resources from one ethnic group to another. An example of such measures can be found in Fiji where the government provides grants for aboriginal populations should they wish to acquire farmland⁴⁹.

In practice, the different areas of affirmative action interact and compliment each other. Providing grants in areas

⁴³ Muttarak, R., Hamill, H., Heath, A. and McCrudden, C. (2012). Does Affirmative Action Work? Evidence from the Operation of Fair Employment Legislation in Northern Ireland. *Sociology*, 47(3), pp.560-579.

⁴⁴ Agócs, C. and Burr, C. (1996). Employment equity, affirmative action and managing diversity: assessing the differences. *International Journal of Manpower*, 17(4/5), pp.30-45

⁴⁵ Assemblée nationale, fiche de synthèse : L'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives - Rôle et pouvoirs de l'Assemblée nationale - www.assemblee-nationale.fr.

⁴⁶ Cortes, K. (2010). Do bans on affirmative action hurt minority students? Evidence from the Texas Top 10% Plan. *Economics of Education Review*, 29(6), pp.1110-1124.

⁴⁷ Lee, H. (2014). Affirmative Action Regime Formation in Malaysia and South Africa. *Journal of Asian and African Studies*, 51(5), pp.511-527.

⁴⁸ McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. *International Encyclopaedia of the Social & Behavioural Sciences*. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255

⁴⁹ Idem

such as education will increase employability and therefore better the position of the target group on the labour market. While the correlation between different areas of affirmative action is not the main focus of the study, it should be acknowledged that these interactions have further repercussions on the economic wellbeing of the target group.

1.2 Affirmative action and related terminologies

1.2.1 *Positive action, affirmative action, positive discrimination*

While over the time, terms such as *employment equity* and *diversity management* have been understood to diverge from the classical definition of affirmative action; there is little consensus in literature about the differences between positive action, affirmative action or positive discrimination.

Generally, affirmative action has been used to refer to the American approach. Subsequently, in countries that have partially inspired their programs on the measures implemented by the United States such as for example South Africa, Brazil or Malaysia, the set of measures are also referred to as “affirmative action”⁵⁰. Although the concept of affirmative action has evolved through the years, measures adopted under this definition are primarily directed at solving issues of discrimination based on race and gender by increasing numerical representation via regulation and enforcement⁵¹.

“*Positive action*” is often employed in refereeing to the European approach on the matter. This comes from an interpretation at European level of *affirmative action* as being a “*strong form of preferential treatment for disadvantaged groups*” based “*essentially on membership of such a group*”, whereas at European level, positive action refers to “*measures which do not involve unconditional preferential treatment based purely on individuals characteristics*”⁵². From a European perspective, positive action is therefore understood as a set of measures seeking to benefit disadvantaged groups, however this excludes “*unconditional preferential treatment*”⁵³ on the basis of an individual characteristics.

“*Positive discrimination*” or “*reserve discrimination*” is understood as referring to preferential measures such as the admission of ethnic minority students with lower qualification to university, or in the case of labour markets, the preferred selection of women over men for a specific occupation⁵⁴. In theory, according to European law⁵⁵, positive action is lawful while positive discrimination is unlawful. However, in absence of case law from the

⁵⁰ Ratuva, S. (2013). The politics of preferential development. Australian National University, p.1-11.

⁵¹ Agócs, C. and Burr, C. (1996). Employment equity, affirmative action and managing diversity: assessing the differences. *International Journal of Manpower*, 17(4/5), pp.30-45.

⁵² Agócs, C. and Burr, C. (1996). Employment equity, affirmative action and managing diversity: assessing the differences. *International Journal of Manpower*, 17(4/5), pp.30-45. ; Archibong, U. (2009). International perspectives on positive action measures. Centre for Inclusion and Diversity, University of Bradford, European Roma Rights Centre and Ludwig Boltzmann Institute of Human Rights.

⁵³ Idem

⁵⁴ Archibong, U. (2009). International perspectives on positive action measures. Centre for Inclusion and Diversity, University of Bradford, European Roma Rights Centre and Ludwig Boltzmann Institute of Human Rights.

⁵⁵ EC Directive 76/207 Equal Treatment Directive, Council Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment, Council Recommendation 84/635/EEC

ECJ on this precise matter, the distinction is only assumed. Altogether, there is no clear disambiguation between the terms presented here, which are used interchangeably in literature depending on context. For the purpose of this study, the set of measures undertaken will generally be referred to as affirmative action, as the countries of reference, South Africa and Malaysia are more commonly associated with the US model.

1.2.2 *Employment Equity*

Facing persistent discrimination in employment for women, aboriginal people, disabled persons and ethnic minorities, the Canadian authorities responded with the introduction of the Employment Equity Act (1986) along with a Federal Contractors Programs 1986⁵⁶. These measures, generally referred to as *employment equity* gather a set of actions intended to improve representation of target groups and promote fair employment policies and practices⁵⁷. Additionally, they aim at removing barriers in employment by tackling culture within organisations. The Canadian repose has purposely differenced itself from the notion of affirmative action as provided by the US model in order to avoid the controversy and stigma attached to the set of measures. According to Agócs and Burr (1996), another distinction between employment equity and affirmative is that employment equity does not only work on improving representation though hiring, it is also concerned with promoting supportive systems for marginalized groups⁵⁸. While the term is generally used to refer to the Canadian approach, South Africa has also adapted the model and issued an Employment Equity Act in 1998⁵⁹.

1.2.3 *Diversity management*

While Affirmative action and employment equity are for the major part the initiative of national legislations, managing diversity has been introduced by the private sector. As part of their human resource strategies, since the 1980, companies have been increasingly concerned finding new ways of addressing diversity among both their customer and employee base⁶⁰. The diversity management model, also originating in the US has expanded to be a global human resource practice.

Managing diversity positions itself as a continuation of affirmative action measures in that it seeks to address issues such as integration, retention and career advancement for employees originating from diverse backgrounds. This diversity among the workforce consists of “*visible and non-visible differences*” including factors such as “*sex, age, race, disability, background, personality and work-style*”⁶¹. Making appropriate use of these differences will result in a productive environment where each individual is valued and utilized to the best

⁵⁶ Both revised 1995

⁵⁷ Agócs, C. and Burr, C. (1996). Employment equity, affirmative action and managing diversity: assessing the differences. *International Journal of Manpower*, 17(4/5), pp.30-45

⁵⁸ Idem

⁵⁹ Thomas, A. and Jain, H. (2004). Employment equity in Canada and South Africa: progress and propositions. *The International Journal of Human Resource Management*, 15(1), pp.36-55

⁶⁰ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). *International handbook on diversity management at work*. Edward Elgar Publishing, pp.68-80; 218-240;.

⁶¹ Strachan, G., Burgess, J. and Henderson, L. (2007). Equal employment opportunity legislation and policies: the Australian experience. *Equal Opportunities International*, 26(6), pp.525-540

of their capacities.⁶² Strachan, Burgess and Henderson, (2007) differentiate managing diversity from affirmative action measures, in that managing diversity adopts a positive perspective on differences as opposed to the negative perspective of disadvantage provided by affirmative action measures⁶³. Managing diversity also includes factors such as personality, professional background or work-style that go beyond the scope of affirmative action measures.

While affirmative action measures are usually based on “*legal or moral arguments*”⁶⁴, managing diversity is a private, managerial initiative, built from a company perspective, in line with organisational goals. By including personal differences and providing care for personal aspirations, managing diversity seeks to improve employee well-being and in turn reduce absenteeism, turnover and improve productivity⁶⁵. Because managing diversity programs are built at company level, the magnitude of such programs will also vary from a company to another. The measures are usually intended to result in “*improved human relations, intra-group communication and attitudes*”⁶⁶.

1.3 Types of affirmative action measures

The term affirmative action can be perceived as being an *umbrella concept*, representing a variety of different measures. McCrudden (2015) classifies affirmative action measures in five categories, ranging from more common and widely accepted forms to more specific and controversial measures. The five categories are: “(1) positive measures to avoid unlawful discrimination, (2) indirectly inclusionary measures, (3) attracting qualified candidates using advertising and training targeting the underrepresented group, (4) tie-break policies and (5) preferential treatment for members of the target group”⁶⁷.

1.3.1 Positive measures taken to avoid unlawful discrimination

Measures taken to prevent unlawful discrimination can be divided into 3 categories: (a) “activities preventing and remedying direct discrimination”, (b) “activities taken proactively to remove indirect, systemic and institutional discrimination” and (c) “reasonable accommodation measures” aimed at enabling an individual from a specific group to gain easier access to employment (such as conducting physical modifications in the workplace to provide accessibility for disabled employees)⁶⁸. For example, the South African Employment Act includes measures aimed at “*eliminating employment barriers, including unfair discrimination*” and “*making*

⁶² Strachan, G., Burgess, J. and Sullivan, A. (2004). Affirmative action or managing diversity: what is the future of equal opportunity policies in organisations?. *Women in Management Review*, 19(4), pp.196-204.

⁶³ Strachan, G., Burgess, J. and Henderson, L. (2007). Equal employment opportunity legislation and policies: the Australian experience. *Equal Opportunities International*, 26(6), pp.525-540

⁶⁴ Agócs, C. and Burr, C. (1996). Employment equity, affirmative action and managing diversity: assessing the differences. *International Journal of Manpower*, 17(4/5), pp.30-45

⁶⁵ Idem

⁶⁶ Idem

⁶⁷ McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. *International Encyclopaedia of the Social & Behavioural Sciences*. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255

⁶⁸ Idem

*reasonable accommodation for designated groups*⁶⁹. However, this first category of measures is often not considered as being part of affirmative action programs but rather is regarded a measure preventing unlawful discrimination. Examples of such actions are campaigns against discrimination, facilitating the identification of discrimination, reinforcing the complaint mechanism, requiring that employers make reasonable accommodations to accommodate disabled workers⁷⁰.

An example of reasonable accommodation being classified apart from affirmative action measures can be found in European Union law. European legislation is based on the notion of non-discrimination, meaning that the employer should not account for characteristics such as gender or race in the selection process⁷¹. This type of measure is considered to be a symmetric approach in that both the minority and the majority groups are protected by the legislation⁷². In this case discrimination arises when an individual is treated differently on the basis of such characteristics. On the other hand, reasonable accommodation is an asymmetrical measure, where the employer is required to treat an employee differently on the basis of his classification⁷³. In the case of disabled workers, reasonable accommodation comes as a requirement to the employer not to ignore disability. Because the employer needs to account for this characteristic, discrimination arises only when the employer fails to treat the employee differently. As such, in the European context, reasonable accommodation seeks to remedy issues of discrimination but is not in itself a non-discriminatory measure.

1.3.2 Indirectly inclusionary measures

These measures include targeted government assistance, such as monetary funds destined to a specific urban area, which results in higher benefits for designed groups when such groups are over-represented in the area⁷⁴. An example of such measures is the system adopted by the University of Texas guaranteeing admission to students in the top 10% of the class in each High School of the State. Because of the high segregation levels in the school system the seemingly objective measure had the effect of increasing the number of Black and Hispanic students eligible for admission⁷⁵. Other examples can be found in the Fijian legislation, which provides specific grants for schools with low academic achievements and the training rural youth⁷⁶. Similarly, in France,

⁶⁹ Basic Conditions of Employment Act, 1997 [No. 75 of 1997].

⁷⁰ McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. International Encyclopaedia of the Social & Behavioural Sciences. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255

⁷¹ Archibong, U. (2009). International perspectives on positive action measures. Centre for Inclusion and Diversity, University of Bradford, European Roma Rights Centre and Ludwig Boltzmann Institute of Human Rights.

⁷² McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. International Encyclopaedia of the Social & Behavioural Sciences. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255

⁷³ Archibong, U. (2009). International perspectives on positive action measures. Centre for Inclusion and Diversity, University of Bradford, European Roma Rights Centre and Ludwig Boltzmann Institute of Human Rights.

⁷⁴ McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. International Encyclopaedia of the Social & Behavioural Sciences. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255

⁷⁵ Gaibie, S. (2014). Affirmative action: concepts and controversies. *HeinOnline*, pp.1-24.

⁷⁶ McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. International Encyclopaedia of the Social & Behavioural Sciences. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255

specific areas identified as sensitive (“priority educational areas”), are granted more funds for by national administrations⁷⁷.

1.3.3 Advertising and training the underrepresented group

The third group of measures are designed to attract candidates from the underrepresented group, by advertising opportunities and encouraging applications. They also include measures such training the underrepresented group. Such measures are said to operate on the supply side of the labour market as they aim at changing the behaviour of the target group⁷⁸. They are different from other policies in that they do not entail changes on the side of the employer. Because the measures do not have direct implication for the employer, these type of measures are more widely accepted. One example of such measures can be found in South Africa, where skills and vocational training for the designed groups are provided by the Sector Education and Training Authority (SETA)⁷⁹.

1.3.4 Tie-Break policies

In opposition, tie-break policies act on the “demand side” of the equation and are therefore more controversial. Tie-break policies involve a preference for an individual of the target group when two or more individuals are equally qualified. According to Buchanan (1989)⁸⁰, these practices are the most common and constitute the “*paradigm of affirmative action*”. The both the US Supreme Court and the European Court of Justice have deemed such measures as justified when dealing with cases of gender discrimination⁸¹.

1.3.5 Preferential treatment

Granting preferential treatment to members of the target groups is perhaps the most controversial affirmative action measure. The debate is here fuelled by the fear that a “well-qualified” or “better qualified” person will be disregarded in favour of a member of the target group⁸². McCrudden (2015) distinguishes two different scenarios related to preference: preference for a candidate from the target group irrespective of better qualified candidates or the introduction of quotas in favour of the underrepresented group. Examples of such measures can be found

⁷⁷ Ministry of National Education and Research, Priority education. Available at: <http://www.education.gouv.fr/cid187/l-education-prioritaire.html>

⁷⁸ McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. International Encyclopaedia of the Social & Behavioural Sciences. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255

⁷⁹ Thomas, A. and Jain, H. (2004). Employment equity in Canada and South Africa: progress and propositions. The International Journal of Human Resource Management, 15(1), pp.36-55

⁸⁰ Buchanan, G Sidney, 1989. Johnson v. Transportation Agency, Santa Clara County: a paradigm of affirmative action. Houston Law Review 26 (2), 229.

⁸¹ In the US *Johnson v. Transportation Agency, Santa Clara County*, (1987), in the EU : *Badeck (2000)*, *Abrahamsson and Anderson v. Fogelqvist*, (2000)

⁸² McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. International Encyclopaedia of the Social & Behavioural Sciences. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255

in the Fijian legislation that provides preferential educational scholarships; funds for property and preferential awards of government contract in favour of Fijians⁸³.

Because these measures alter the traditional selection criteria, they modify “merit” in a way that is more likely to favour the targeted group. By adopting such policies, merit is sometimes overridden in favour of increasing participation as was the case in Northern Ireland where a proportion of police candidates chosen were of Catholic profession in order to ensure policing would be more acceptable to that group⁸⁴. Another example of redefining merit can be found in the *Badeck v. Hessischer Ministerpräsident*⁸⁵, where the notion of merit was altered to include characteristic benefiting the target group, namely *family work* and *care responsibilities* were included as qualification criteria, favouring women.

1.4 The affirmative action debate

1.4.1 Justifying the need for affirmative action

Justifications on the need for affirmative action are deeply enrooted into national or regional contexts. In India, the measures were adopted as a way of combating the caste system and are now being expanded to include gender issues⁸⁶. In Malaysia, affirmative action is the result of ethnic tensions that ultimately resulted in public protest⁸⁷. While interpretations of affirmative action vary across national contexts, the reasoning behind the implementation of such measures is often similar.

Affirmative action can be employed to address past discrimination, such as if for example the case of affirmative action in the US where it has been initiated as a way of compensating for years of racial segregation⁸⁸. The measures can also be employed in order to prevent current discrimination, as represented by the European position on affirmative action regarding gender discrimination.

According to Edwards (1995), affirmative action can also be used as a means of “*effecting some redistribution of resources to minority groups in order to improve their general standing in society and their quality of life and, in the process, of enhancing distributive justice*”⁸⁹. This places affirmative action as a means of enhancing redistribution and achieving a more egalitarian society. This argument is part of the Indian approach to affirmative action, through which the government attempts to lessen the economic gap between castes.

⁸³ Idem

⁸⁴ Muttarak, R., Hamill, H., Heath, A. and McCrudden, C. (2012). Does Affirmative Action Work? Evidence from the Operation of Fair Employment Legislation in Northern Ireland. *Sociology*, 47(3), pp.560-579.

⁸⁵ European Court of Justice, *Badeck v. Hessischer Ministerpräsident*, 2000

⁸⁶ Zwart, F. (2000). The Logic of Affirmative Action: Caste, Class and Quotas in India. *Acta Sociologica*, 43(3), pp.235-249.

⁸⁷ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. *Journal of Contemporary Asia*, 42(2), pp.230-254.

⁸⁸ Agocs, C. and Burr, C. (1996). Employment equity, affirmative action and managing diversity: assessing the differences. *International Journal of Manpower*, 17(4/5), pp.30-45.

⁸⁹ Edwards, J. (1995). *When race counts*. London: Routledge.

Promoting diversity via affirmative action is a further argument in favour of these measures. Diversity is increasingly seen as learning tool for both education institutions and business environments. Because people from diverse backgrounds have different and broader understating of issues, using the knowledge base provided by this poll of participants can be beneficial to the institution. Diverse organisations are therefore more likely to be reactive and proactive in dealing with complex issues⁹⁰. Affirmative action measures can therefore contribute to reaching diversity goals by increasing the number of applicants and employees from all backgrounds. Similarly, social cohesion arguments taken on the idea that increased interaction between groups of society will in turn increase connections amongst each other, ultimately resulting in increased social harmony⁹¹.

In practice however, a combination of factors will justify the need for affirmative action. This was for example the case in Northern Ireland where affirmative action was mainly used as a way of reducing discrimination against catholic populations. However, the problem was not only that of discrimination in the labour market but also of the subsistent economic gap between Catholics and Protestant. As such, social justice and redistributive arguments were further put forwards when catering to the economic well being of the catholic population. Nonetheless, the government made sure to implement affirmative action in a symmetrical manner, meaning that the measures included the protection of both Protestants and Catholics. This logic was based on the assumption that furthering the condition of both groups would aid social cohesion and avoid public order issues in an already tense climate⁹².

1.4.2 For and against affirmative action

While in essence, affirmative actions measures are adopted to promote principles of justice and equality⁹³, the controversy surrounding affirmative action arises when the situation of one group is perceived as being undermined by the actions taken in favour of the disadvantaged group⁹⁴. As analysed in the previous section, advocates of affirmative action often cite the need to equalise opportunity, increase the well-being of minorities and create positive economic effects.

In opposing affirmative action, critics often refer to the policy as a form of “reverse discrimination”, harmful to the meritocratic system. Because some measures such as tie-break or preferential treatment policies readjust the notion of merit of include the target group, they are often perceived as having an unfair nature from people outside of the target group. The debate is further fuelled by the existent confusion in the public eye between this type of measures and other “softer” programs designed to help the integration of the group in the labour

⁹⁰ Combs, G., Nadkarni, S. and Combs, M. (2005). Implementing Affirmative Action Plans in Multinational Corporations. *Organizational Dynamics*, 34(4), pp.346-360.

⁹¹ McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. *International Encyclopaedia of the Social & Behavioural Sciences*. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255

⁹² Muttarak, R., Hamill, H., Heath, A. and McCrudden, C. (2012). Does Affirmative Action Work? Evidence from the Operation of Fair Employment Legislation in Northern Ireland. *Sociology*, 47(3), pp.560-579.

⁹³ Agocs, C. and Burr, C. (1996). Employment equity, affirmative action and managing diversity: assessing the differences. *International Journal of Manpower*, 17(4/5), pp.30-45.

⁹⁴ Ratuva, S. (2013). The politics of preferential development: Affirmative action and trans-global study. ANU Press, Chap.1.

market⁹⁵.

Faundez (1994) argues that the compensatory aspect of affirmative action is undermined by the use of a discriminatory criterion. He notes that if “*arbitrary discrimination has occurred because morally irrelevant characteristics of persons – such as sex, religion or race – have been taken into account to treat them differently, it would not be permissible to take into account the same characteristics in order to compensate them for the initial act of discrimination*”⁹⁶. The underlying argument is that if affirmative action is intended to remedy a form of past discrimination it should not use the same discriminatory criteria as a way of addressing the wrongdoing.

Further issues arise when affirmative action is associated with group rights. Critics have suggested that affirmative action should be utilised on a case-by-case basis when discrimination has occurred at personal level. On the other hand, the individual need for affirmative action might arise from being associated with a particular group that has suffered systemic discrimination (as was the case for example in South Africa). In this particular case, advocates of affirmative action, call on the notion of distributive justice in justifying helping a particular group and ultimately improving the conditions of the entire community⁹⁷.

Using ethnicity as a characteristic in constructing affirmative action programs is a particularly emotional matter. Studies have suggested that the use of other distinctions such as economic wellbeing would be more appropriate. In a 2013 study on attitudes towards affirmative action, Kovacs et al. find that women were more likely to react positively to “traditional” affirmative action programs (based on gender or ethnicity) while men were more favourable to action based on socio-economic status. However, when presented with a four different job applications that included diversity statements both groups evaluated the offers as being less fair than other offers, which did not include such a statement. They concluded by pointing out the importance of framing and explaining the use of affirmative action programs in order to encourage a more positive public opinion⁹⁸. In a similar study on affirmative action and redistribution Austen-Smith and Wallerstein (2006) find that the introduction of a racial-sensitive policy reduced the support for welfare policies, even when the effect of such policies benefit members from both the majority and the minority of the population⁹⁹.

Economists have also questioned the efficiency of positive action measures. At micro-economic level, Crosby (2004) studied the performance of firms implementing affirmative action measures and concluded that firms examined were as profitable as other firms¹⁰⁰. Similarly, in a laboratory experiment Kölle (2017) finds that the implementation of affirmative actions in the form of gender quotas did not have any negative effects on team

⁹⁵ Ratuva, S. (2013). The politics of preferential development: Affirmative action and trans-global study. ANU Press, Chap.1.

⁹⁶ Faundez, J. (1994). Affirmative action: International perspective. Geneva: International Labour Organization

⁹⁷ Darity Jr., W., Deshpande, A. and Weisskopf, T. (2011). Who Is Eligible? Should Affirmative Action be Group- or Class-Based?. American Journal of Economics and Sociology, 70(1), pp.238-268.

⁹⁸ Kovacs, J., Truxillo, D., Bauer, T. and Bodner, T. (2013). Perceptions of Affirmative Action Based on Socioeconomic Status: A Comparison with Traditional Affirmative Action. Employee Responsibilities and Rights Journal, 26(1), pp.35-57.

⁹⁹ Austen-Smith, D. and Wallerstein, M. (2006). Redistribution and affirmative action. Journal of Public Economics, 90(10-11), pp.1789-1823.

¹⁰⁰ Crosby, F. (1994). Understanding Affirmative Action. Basic and Applied Social Psychology, 15(1), pp.13-41.

performance and cooperation¹⁰¹. The authors conclude that the use of quotas would not harm the economic efficiency of the company. Outside of laboratory settings, when examining the productivity of Indian Railways, a public sector subjected to affirmative action, Deshpande and Weisskopf (2014) find no decrease in productivity after implementation¹⁰².

At macro-economic level, Moro and Norman (2003) find mixed result of introducing affirmative action measures. They denote that despite the introduction of such measures, there are equilibriums in the market where groups are still treated differently.¹⁰³ They further note that the welfare effect for the target group might be negative despite the introduction of the measure in the worse payoff equilibrium¹⁰⁴.

Publically, the discourse on affirmative action takes on a controversial facet, where arguments are often formed based on political interests. All together, affirmative action is a divisive subject providing multitudes of arguments both for and against its use. Diverse methods have been utilised in evaluating the measures, with approaches ranging from philosophical, sociological to economical. The present study will seek to assess the efficiency of affirmative action in terms of observed changes in the labour market, such as the evolution of indicators of employment, occupational status, average income and income disparities.

¹⁰¹ Kölle, F. (2017). Affirmative action, cooperation, and the willingness to work in teams. *Journal of Economic Psychology*, 62, pp.50-62.

¹⁰² Deshpande, A. and Weisskopf, T. (2014). Does Affirmative Action Reduce Productivity? A Case Study of the Indian Railways. *World Development*, 64(C), pp.169-180.

¹⁰³ When calculating the possible effects of an affirmative action measures, the study computes the labour market equation in a way that accounts for the possible economics effects of affirmative action. The results of the new equation are referred to as equilibrium in the market (the equation can provide more than one equilibrium with better or worse payoffs). In order to assess the effects of the measure, the equilibrium on the market prior to the introduction of the measure is compared with the equilibrium given by the formula after introduction.

¹⁰⁴ Moro, A. and Norman, P. (2003). Affirmative action in a competitive economy. *Journal of Public Economics*, 87(3-4), pp.567-594.

PART II: CASE STUDY

The following section will address national level implementations in the selected countries, Canada, Malaysia and South Africa. Each country section will provide an introduction to national contexts, an analysis of the implementation into national legislation of affirmative actions measures followed by a final segment dedicated to diversity management practices. Being less entrenched into complex matters of civic or political disorder, the first model to be analysed will be that of Canada. Following this description, the South African and Malaysian models will be addressed. These two countries provide prominent examples of large scale implementations in response to societal tensions.

2.1 Canada

2.1.1 Context

Home to 50 different aboriginal nations, African and Chinese migrants along with groups of French, English and other European descendants, Canada has a longstanding history of multiculturalism. While the US model has long been referred to as a “melting pot”, the Canadian system is often referred to as a “mosaic”, where each culture is encouraged to maintain its own identity whilst contributing to the Canadian one. The perception of the country as “mosaic” remains prevalent and fundamental to the Canadian approach on affirmative action¹⁰⁵. While human right statutes preventing unfair discrimination were in place since the 1960’s, the persistent obstacles faced by both minorities and women as well as fears of social conflict compelled the Government into adopting supplementary measures. In 1984, following by the recommendations of Judge Rosalie Abella, also known as the Abella report, the Canadian Federal Government adopted the Employment Equity Act, a document specifically designed to address the diverse and ever-changing nature of the workforce¹⁰⁶. Good economic growth, low birth rates and low unemployment in the years 2000 had left the country facing a shortage of skilled workers. The adoption of an intensive immigration policy between 2001 and 2006 led to the arrival of an estimated extra 1.1 million migrant workers, all of which needed to be integrated into the labour market¹⁰⁷.

2.1.2 Country profile

¹⁰⁵ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

¹⁰⁶ Thomas, A. and Jain, H. (2004). Employment equity in Canada and South Africa: progress and propositions. The International Journal of Human Resource Management, 15(1), pp.36-55.

¹⁰⁷ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

Table 1.1 Country Statistics, Canada¹⁰⁸

Income level	High
Gross National Income per Capita	43,660 \$
Unemployment	7%
Ethnic groups	<ul style="list-style-type: none"> • 28% British and Irish • 23% French • 15% Other Europeans • 26% Mixed background • 6% Asian, African, Arab • 2% Aboriginal populations
Total labour force	19, 940, 727

2.1.3 Employment Equity

In the early 1960's, Human Rights statutes along with the Canadian Constitution¹⁰⁹ provided the basis for employment equity. While equal treatment is specified by the Constitution: *"every one is equal before the law without discrimination"* (section 15.1), the Canadian Human Rights Act (1985) prohibits discrimination in the 10 provinces on grounds of *"race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for which a pardon has been granted"*¹¹⁰. The provisions also allowed employers to take *voluntary* action in improving employment equity for disadvantaged groups¹¹¹.

Canada's affirmative action policy originated in the 80's not long after the adoption of such policies in the neighbouring USA. While some practices were adapted from the US implementation, the overall model was intentionally differentiated. Affirmative action was primarily viewed as a strategy for improving numerical representation and distribution of the designed group, while the Canadian employment equity model was designed to provide a broader scope, including the creation of support systems and supportive organisational culture and environments for the beneficiary groups¹¹². Employment Equity Act (EEA) of 1986 was instated as a tool for removing barriers to employment for *"historically disadvantaged groups"* and *"remedying to past discrimination in employment"*¹¹³. The act designated four groups as beneficiaries: women, visible minorities¹¹⁴, aboriginal people and persons with disabilities and included two programs the Legislated Employment Equity Program (LEEP) and the Federal Constructors Program.

¹⁰⁸ Data extracted from <http://data.worldbank.org/country>, 2016 or latest year available

¹⁰⁹ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982

¹¹⁰ Canadian Human Rights Act, 1985

¹¹¹ Thomas, A. and Jain, H. (2004). Employment equity in Canada and South Africa: progress and propositions. *The International Journal of Human Resource Management*, 15(1), pp.36-55.

¹¹² Agócs, C. and Burr, C. (1996). Employment equity, affirmative action and managing diversity: assessing the differences. *International Journal of Manpower*, 17(4/5), pp.30-45.

¹¹³ Employment Equity Act, Canada, 1986

¹¹⁴ The term refers to persons other than aboriginal populations that are non-Caucasian in ethnicity

The LEEP concerns employers from the “*banking, transportation communication and federal crown corporations*” employing more than 100 persons¹¹⁵. These corporations are required to enact equity plans for the promotion of representativeness of their workforce, identify and eliminate discriminatory practices and provide goals and schedules for the operation of such special measures. They are further required to collect data with regard to their employees in terms of occupational status, wage and representativeness of designed groups. The data is submitted to the Ministry of Human Resources and Social Development in charge of analysing compliance¹¹⁶. Non-compliance can lead to financial penalties up to 50 000\$¹¹⁷. The ministry is also in charge of issuing guideline and tools to help the implementation of employment equity. For example regional consultants can assist employers in meeting their obligations by examining employment conditions or practices such as training and recruitment in the company, and pointing out eventual flaws that might lead to unfair discrimination. If needed, the institution will then be asked to readjust their company policy. The LEEP concerns a combined workforce of about a million employees, mostly working in transport services, banking and communication sectors but also employees from federal agencies such as the police or security services¹¹⁸.

Originally, the LEEP program was criticised for the lack of enforcement mechanisms, which led to the amendment of the Act in 1995. The amendment brought about the creation of the Employment Equity Review Tribunal and provided rights to the Commission on Human Rights to conduct audits in the companies concerned by the EEA. Further measures were also included to increase the participation of employee and employer unions to EEA implementation¹¹⁹.

The second program instated by the EEA, the Federal Constructors Program (FCP) is a private voluntary mechanism, applied to non-federal organisations wishing to supply goods and services to the federal government. The program applies to companies of more than 100 employees that have been granted contracts exceeding a value of 1 million \$¹²⁰. The program is intended as an incentive rather than legislation, with the ultimate goal of introducing voluntary organisational change.

When contracting with the Federal Government, companies are required to complete a document certifying their willingness to participate in the EEA program. In the first years of implementation, the program did not entail a systematic reporting and data collection for these private companies, however due to low compliance levels it has since been amended to include similar criteria to the LEEP program. Employers are now required to collect information, complete an analysis of their workforce, establish numerical goals and make “reasonable progress and reasonable efforts”. In the case of non-compliance, the federal government can terminate the contract and

¹¹⁵ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

¹¹⁶ Idem

¹¹⁷ Laws-lois.justice.gc.ca. (2017). Employment Equity Act. [online] Available at: <http://laws-lois.justice.gc.ca/eng/acts/E-5.401/>

¹¹⁸ idem

¹¹⁹ Thomas, A. and Jain, H. (2004). Employment equity in Canada and South Africa: progress and propositions. The International Journal of Human Resource Management, 15(1), pp.36-55.

¹²⁰ Federal Constructors Program - Canada.ca. [online] Canada.ca. Available at: <https://www.canada.ca/en/employment-social-development/programs/employment-equity/federal-contractor-program.html>

place the contractor on the “limited eligibility to bid list”. By being registered on this list, the contractor loses its ability to provide future bids for the federal contracts. The classification is not permanent however and the contractors can, after remedy to the situation, demand a second audit by the authorities¹²¹.

The FCP is a voluntary program meaning that its implementation results from company policy. The perceived cost of implementation is weighted against the benefits of contracting with the Government. In a 2004 study, less than 5% of employees reported being discouraged by the requirements¹²². The FCP concerns about a million employees with most companies operating as equipment suppliers, transport or electrical services.¹²³

Reports on employment equity progress are published each year by the government. Since its implementation, the program has seen a steady (but arguably slow) increase in the representation of women and minorities in designated institutions.¹²⁴ However, at national level, minorities continue to experience higher rates of unemployment, even at better qualification levels. A 2008 study denoted that lack of recognition of credentials, and the lack of work experience in the country as well as language barriers as possible cause for this tendency¹²⁵. Some migrant workers have restored to working lower skilled jobs, resulting in scenery where the country was home to “*the most overqualified cab drivers, pizza-delivery men and caretakers in the world*”¹²⁶. A further assessment of the Canadian labour market and EEA results will be provided in section 3.

2.1.4 Diversity Management

The shift from a compliance driven focus to a diversity-orientated stagey for private companies is well grounded in the Canadian context. The recognition that managing diversity could results in better performance outcomes started in the late 80’s, emulating the US managerial model. Human resource managers were first to point out that diversity among the workforce would provide a competitive advantage when addressing diverse customers segments. While at first diverse workforces were solely perceived as method of catering to a diverse customers base, the idea has since then evolves and now understands diversity as a central business strategy, built to improve overall performance¹²⁷.

Despite the voluntary distancing of affirmative action from measures of employment equity, the Canadian policy has also suffered its share of public backlash over the years. In a similar tone to that on Austin vs. University of Texas in the US, controversies surrounding the measures were amplified when the candidature of Sara Landriault, a Caucasian woman, was not taken into consideration for a position in the federal government, this

¹²¹ Idem

¹²² Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

¹²³ Idem

¹²⁴ Thomas, A. and Jain, H. (2004). Employment equity in Canada and South Africa: progress and propositions. The International Journal of Human Resource Management, 15(1), pp.36-55.

¹²⁵ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

¹²⁶ Idem

¹²⁷ Agócs, C. and Burr, C. (1996). Employment equity, affirmative action and managing diversity: assessing the differences. *International Journal of Manpower*, 17(4/5), pp.30-45.

position being reserved to minority candidates¹²⁸. The debate has in some effect encouraged the adoption of less controversial diversity management policies, which when adopted under the advisement of an organisational change practitioner need not be distributive and result in positive outcomes for the company¹²⁹.

In a 2010 national survey, half of the responding managers indicated that they had adopted a diversity management strategy as part of their company policy.¹³⁰ The majority of employers indicated using diversity management as a means of gaining a competitive advantage, increasing the pool of eligible candidates, providing a mirror to their clientele base and improving relationships at all levels (customer to employee, employee to management). Other employers perceived diversity management part of their corporate social responsibility and as such listed these practices under their social commitment policies. A positive note on the matter is that few perceived managing diversity as a legal requirement or an issue of administrative burden and compliance¹³¹. In 2006, managing diversity had even yielded better results in the private sector than the public sector, employing 14.9% of minorities workers versus 8.6% in the public sector¹³². Recently, diversity management practitioners have expanded its focus to include other disadvantaged groups such as sexual minorities¹³³.

In short, the Canadian model is primarily based on one legal instrument, the Employment Equity Act (1986) and concerns a narrow proportion of the workforce in federally regulated sectors. On the other hand, diversity management implementation in the country is a widely spread and accepted practice. The next section will provide an overview of the South African model, where employment equity legislation has been largely adapted from the Canadian model. However in the case of South Africa, the scope of the legislation concerns the majority of both public and private enterprises.

¹²⁸ Toronto Sun. (2017). Woman denied government job because of race. [online] Available at: <http://www.torontosun.com/news/canada/2010/07/20/14772661.html>

¹²⁹ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

¹³⁰ Idem

¹³¹ Schmidt, P. (2004). An approach to diversity training in Canada. *Industrial and Commercial Training*, 36(4), pp.148-152.

¹³² Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

¹³³ Idem

2.2 South Africa

2.2.1 Context

From the 1910 Unification of the Cape and Natal colonies and the formation of the Union of South Africa and until 1994, political power in South Africa was detained by a minority of colons, otherwise called Afrikaner whom over the years enacted a series of legislations, ultimately enforcing racial segregation in the country. The period of effective segregation between 1948 and 1991, referred to as Apartheid, will worsen economic disparities, resulting in a setting where a rich minority controls the majority of national wealth. South Africa became a Republic in 1961, however the first democratic elections only took place in 1994, appointing Nelson Mandela as head of the State¹³⁴. The new regime immediately sought to address the legacies of the Apartheid period. The task at hand was colossal, with a prevalence of discriminatory practices ranging from everyday aspects to areas such as education and employment. Traditionally non-white males worked low-skilled jobs while managerial positions were reserved to white males. When they worked, women of colour occupied low paid positions such as factory jobs while white women were employed in sectors such as care or teaching¹³⁵. In order to address years of inequity in the labour market, the South African government introduced an intensive series of affirmative action measures.

2.2.2 Country profile

Table 1.2 Country Statistics, South Africa¹³⁶

Income level	Upper middle
Gross National Income per Capita	5,408 \$
Unemployment	25.15%
Ethnic groups	<ul style="list-style-type: none">• 79.2 % “Black” African• 8,9% Coloured• 8,9% White• 2.5 % Indian or Asian
Total labour force	21,172, 029

2.2.3 Affirmative Action and employment equity

In addressing the need for equality, the Constitution of the South African Republic¹³⁷ includes explicit provisions allowing the use of affirmative action. Chapter 3 (section 8) provides the right to equality and equal protection, making “unfair discrimination” unlawful. Section 9 provides the most relevant provisions with regard to affirmative action. The section notes:

¹³⁴ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

¹³⁵ Idem

¹³⁶ Data extracted from <http://data.worldbank.org/country>, 2016 or latest year available

¹³⁷ Constitution of the Republic of South Africa, 10 December 1996, available at: <http://www.refworld.org/docid/3ae6b5de4.html>

- “9 (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- 9 (2) 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.
- 9 (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth...”¹³⁸ “

The first clause of this section is a general provision on equality, applicable to all citizens. Paragraph (2) provides the legal basis for implementing affirmative action programs by allowing the State to undertake “*legislative and other measures*” in addressing the position of individuals that are “*disadvantaged by unfair discrimination*”. Paragraph (3) prohibits discrimination, specifying the grounds that constitute unfair discrimination (*race, gender, age...*) It is important to note that while Para.(3) denotes the grounds for non-discrimination, paragraph (2) does not include any specifications with regard to whom the designed group of affirmative action is¹³⁹. While there are specific provisions for affirmative action in the Constitution, further legislation will be introduced in order to define designed groups.

The definition of “designed group” in the South African context will be provided by the 1998 Employment Equity Act (EEA)¹⁴⁰, which specifies beneficiary groups as being: Blacks¹⁴¹, women irrespective of race and persons with disabilities. Tacking on the stand that inequity in the market will not disperse without public intervention, the EEA explicitly distinguishes affirmative action from unfair discrimination and establishes the framework for implementing affirmative action in “hiring, promotion and training” with the main goal of improving the representation of suitable candidates from the designated group. The EEA regards enterprises of more than fifty employees as well as municipal authorities. It is applicable to both public and private sectors and operates using preferential treatment and numerical goals, however it does not include quotas¹⁴².

Compliance with the Employment Equity Act is enforced through the Inspectorate Division. Employers are required to collect information with regards to their respective workforce (racial profile and professional categories). The report is to be discussed in collaboration with trade unions and used for assessment as well as

¹³⁸ Constitution of the Republic of South Africa, 10 December 1996, available at: <http://www.refworld.org/docid/3ae6b5de4.html>

¹³⁹ Pretorius, J. (2001). Legal evaluation of affirmative action in South Africa. *Journal for Juridical Science*, 26(3).

¹⁴⁰ Employment Equity Act, Republic of South Africa, 1998, amended 2014

¹⁴¹ Definition of Black people formulated to include African, Coloured, Indian, and South African of Chinese origin.

¹⁴² Mustapha, A. (2011). Seeking Representativeness: Affirmative Action in Nigeria and South Africa Compared. *Overcoming the Persistence of Inequality and Poverty*, Palgrave Macmillan UK(Book Section), pp.251-276.

the formulation of improvement objectives¹⁴³. Employers of more than 150 employees are to submit a report every year to the competent authorities while employers of smaller enterprises are due to submit every 2 years. The reports are required to be public and accessible to any workers within the company. Labour inspectors and trade unions are also in charge of EEA enforcement. Labour inspectors can issue compliance orders which may lead to fines should the matter be referred to the Labour Court¹⁴⁴.

A further notable aspect of the South African approach to affirmative action is the inclusion of professional training via the Skills Development Act (1998) alongside with the creation of the Sector Education and Training Authorities which provide grants in the form of levies for employers enlisted in the program. However, Lee (2015) points out that in practice, many companies will not call on the SETA for training as its “*record of skills development and reputation are generally not held in high esteem*”¹⁴⁵. Further, full compliance with employment equity is perceived as an additional cost or even an extension of the “Apartheid mentality” and compliance in medium sized firms is observed at very low level¹⁴⁶.

Along with the introduction of the EEA, 1998 had seen the introduction of the Competition Act in favour of black owned business ventures as well as the National Empowerment Fund, designed to hold equity and support business ventures and investments. However, the lack of coordination efforts lead to dire results in the labour market. Unemployment reached to 38% in 2000 for the most part concerning unskilled black labourers¹⁴⁷. While the first set of measures had contributed to advancing the position of a better off black minority the rest of the population was still largely disadvantaged¹⁴⁸.

This context lead to the introduction of the Broad-Based Black Economic Empowerment Act (2003), defined as an “*economic transformation strategy*” aimed at addressing persistent inequality among the population¹⁴⁹. Among its objectives, the BEE aims at increasing the number of Black people owning and controlling businesses and well as black representation in executive and management positions, promote shared economic growth and reduce inequality. Deigned beneficiaries of the act are Black people; understood as Africans, Coloureds, Indians and South Africans of Chinese origin¹⁵⁰.

“Codes of good practices” supporting the implementation of the BEE are grouped into three main categories by the Department of Trade and Industry: “(a) direct empowerment through ownership and control (b) human

¹⁴³ Idem

¹⁴⁴ Horwitz, F. and Jain, H. (2011). An assessment of employment equity and Broad Based Black Economic Empowerment developments in South Africa. *Equality, Diversity and Inclusion: An International Journal*, 30(4), pp.297-317.

¹⁴⁵ Lee, H. (2015). Affirmative Action in Malaysia and South Africa: Contrasting Structures, Continuing Pursuits. *Journal of Asian and African Studies*, 50(5), pp.615-634.

¹⁴⁶ Idem

¹⁴⁷ Unemployment in 1995- 28% ; Mustapha, A. (2011). Seeking Representativeness: Affirmative Action in Nigeria and South Africa Compared. *Overcoming the Persistence of Inequality and Poverty*, Palgrave Macmillan UK(Book Section), pp.251-276.

¹⁴⁸ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). *International handbook on diversity management at work*. Edward Elgar Publishing, pp.68-80; 218-240;.

¹⁴⁹ Horwitz, F. and Jain, H. (2011). An assessment of employment equity and Broad Based Black Economic Empowerment developments in South Africa. *Equality, Diversity and Inclusion: An International Journal*, 30(4), pp.297-317.

¹⁵⁰ South African Chinese included in 2008 by Court injunction

resource development and employment equity (c) indirect empowerment (preferential procurement and enterprise development)¹⁵¹. Compliance is audited by outside agencies, which rank enterprises in three categories: good performers, satisfactory and limited performers¹⁵². BEE legislation extends on the first dimensions given to affirmative action and is specifically designed to address black advancement as opposed to employment equity regulations which are built to include other designed groups (such as women and disabled workers). Participation is voluntary and reinforced by the award of public procurement contracts¹⁵³. South African affirmative action takes on a broad scope encompassing the public and the private sphere as well as the adoption of supplementary mechanisms for non-compliance.

Racial representatives at managerial level has increased under the initiative of both the EEA and BEE, however handover of power has naturally faced resistance, notably in family-owner companies and small enterprises¹⁵⁴. Intensive restructuring conflicted with pre-existing requirements in the labour market. In high-skilled positions, restructuring proved difficult to enact, as these positions are critical for business welfare. At the same time, because Blacks had been traditionally excluded from such positions, there was a shortage of both skills and experience among the designed group. Due to the labour market mismatch, adverse effects of implementation include the use of non-executive appointments and “*window dressing*” practices in larger companies¹⁵⁵.

2.2.4 Diversity Management

Implementation of diversity management among South African companies is a process in its infancy. As opposed to the United States where the model was introduced 30 years ago, diversity management is a rather new concept for South African enterprises. Due to the subsistence of a racial segregation policy until 1991, it comes as no surprise that diversity management discourses in South Africa prior to this date are non-existent. In recent years some companies have recognised the value of diversity in the workplace, encouraged by the implementation of affirmative action programs. Nonetheless, few companies have established a comprehensive program with most implementations of diversity management consisting of voluntary quotas or the adoption of internal policies for the protection of diverse workers¹⁵⁶.

Thomas and Ely (1996) developed a paradigm of company vision on diversity management, identifying three perspectives ranging from elemental implementations to comprehensive and inclusive measures. The three paradigms are:

¹⁵¹ Horwitz, F. and Jain, H. (2011). An assessment of employment equity and Broad Based Black Economic Empowerment developments in South Africa. *Equality, Diversity and Inclusion: An International Journal*, 30(4), pp.297-317.

¹⁵² Idem

¹⁵³ Unemployment in 1995- 28% ; Mustapha, A. (2011). *Seeking Representativeness: Affirmative Action in Nigeria and South Africa Compared. Overcoming the Persistence of Inequality and Poverty*, Palgrave Macmillan UK(Book Section), pp.251-276.

¹⁵⁴ Lee, H. (2010). *Racial Inequality and Affirmative Action in Malaysia and South Africa*. PHD. University of Massachusetts.

¹⁵⁵ Idem

¹⁵⁶ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). *International handbook on diversity management at work*. Edward Elgar Publishing, pp.68-80; 218-240;.

- (1) *Discrimination-fairness focus*: focus on equal opportunity and fair treatment, recruitment of designed group in compliance with legislation, emphasis on assimilation
- (2) *Access-legitimacy focus*: match customers with employee demographics, recruitment of a diverse set of employees to match demand, diversity mainly confined to specific market segments
- (3) *Learning-effectiveness focus*: incorporates diversity at heart of business culture and mission, aims at enhancing performance of all employees, inclusive organisations.¹⁵⁷

When assessing South African companies according to this paradigm, Booysen et al. (2007) find that most enterprises are still confined to the first paradigm¹⁵⁸. The authors note that the legacy of Apartheid keeps organisations trapped in a “*remedy for past discrimination*” perspective that does not view diversity as an asset for the enterprise. While the Apartheid legacy complicates the road ahead for the effective introduction of diversity management in South Africa, it is encouraging to note that a select few companies such as First National Bank or Shell have successfully implemented these programs. Successful diversity management practices for South African enterprises includes the implementation of fair recruitment and employment practices, personal development (though integration in the organisation, job rotation and career-paths), effective consultation at all level as well as inclusion of “fear” management for white males¹⁵⁹.

Notable features of the South African model include the implementation of measures in both the public and private sectors, based on the use of several legal instruments and enforcement mechanisms. Because the South African model seeks to remedy disadvantages occurred to a majority of its population, it is often described alongside the Malaysian model, where a majority of indigenous populations are the target group of such measures. In order to assess possible similarities between the models, the following section will describe national implementation methods in Malaysia.

¹⁵⁷ Thomas, D.A. and Ely, R.J. (1996), ‘Making differences matter: a new paradigm for managing diversity’, Harvard Business Review, September–October, 79–90.

¹⁵⁸ Booysen, L., Nkomo, S. and Steyn, M. (2007), ‘Rethinking the diversity paradigm: South African practices’, International Journal on Diversity in Organisations, Communities and Nations, 7 (4), 1–10

¹⁵⁹ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

2.3 Malaysia

2.3.1 Context:

Ethnic divide among the Malaysian population has developed over a relatively extended period of time. Tin mining first attracted British colons, however to due to their relative proximity with the peninsula, Chinese miners also flooded in large numbers, attracted by the newly discovered wealth. Chinese colons formed mining confederations while others built their fortune around trade. Indian migrants followed the arrival of the Chinese, mainly taking on work in government positions or rubber plantations. Others became merchants or traders. During the colonial period, Chinese and Indian inhabitants dominated most economic areas such as manufacturing, trade and mining while Malay populations (also referred to as Bumiputera, “*sons of the soil*”¹⁶⁰) were mainly confined to agricultural roles¹⁶¹. This created an economic division of labour along lines of ethnicity, whereby ethnic groups for the main part corresponded with a specific occupational status.

By the time Malaysia obtained its independence in 1957, the economic gap between the different ethnicities had only widened¹⁶². The new Constitution was nonetheless built to account for these disparities, drafted as a compromise between the political parties representing each ethnic group¹⁶³: “the United Malays National Organisation, the Malaysian Chinese Associations And Malaysian Indian Congress” which became the newly unified “Malaysian Alliance Party”¹⁶⁴. The 1957 Constitution¹⁶⁵ included a provision for “special rights” (article 153), allowing priority for Malay residents in terms of economic development, access to education and business licencing. The legal nature of ethnic quotas and preferential selection are characteristics of the Malaysian interventionist approach to affirmative action¹⁶⁶. Despite this first mention in the 1957 Constitution, substantial affirmative actions programs were not implemented until 1969. This year is reminiscent of violent political protests stemming from longstanding economics tensions between Malays and “foreign” ethnicities. After days of ethnic violence, leading to the declaration of an emergency state, there was a common understanding that a more aggressive policy was an imperative in avoiding future civil unrest.

2.3.2 Country profile

¹⁶⁰ The terms will be used interchangeably

¹⁶¹ Ratuva, S. (2013). The politics of preferential development: Affirmative action and trans-global study. ANU Press, Chap.8.

¹⁶² idem

¹⁶³ Malay/ Bumiputera represent around 60% of the population, Chinese 23%, Indian 7%

¹⁶⁴ Ratuva, S. (2013). The politics of preferential development: Affirmative action and trans-global study. ANU Press, Chap.8.

¹⁶⁵ Malaysia Federal Constitution, 31 August 1957, available: <http://www.refworld.org/docid/3ae6b5e40.html>

¹⁶⁶ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. *Journal of Contemporary Asia*, 42(2), pp.230-254.

Table 1.3 Country Statistics, Malaysia¹⁶⁷

Income level	Upper middle
Gross National Income per Capita	5,408 \$
Unemployment	3.1%
Ethnic groups	<ul style="list-style-type: none"> • 58% Malay and other indigenous • 24% Chinese • 8% Indian • 10% Other
Total labour force	14, 584 ,498

2.3.2 Affirmative action

The New Economic Policy (NEP)¹⁶⁸, enacted after the events of 1969, had two main objectives: to address poverty as a whole, irrespective of race and to accelerate country transformation in a way that “*eliminates the identification of race with economic function*”¹⁶⁹.

While measures undertaken to eradicate poverty did not specify ethnic preference, the majority of cases classified as poor regarded the Malayan population, whom ended up being the principal beneficiaries of these measures¹⁷⁰. On the other hand, restructuring policies that included grants for business development were more likely to benefit the better off minority of the Bumiputera population. Over the years, budget allocations shifted their main focus from poverty eradication to restructuring policies, having the adverse effect of widening inequalities within the Bumiputera community¹⁷¹. However, the NEP as a whole was more “*of a political vision statement*”¹⁷² rather than a substantive set of interventions. Affirmative action measures will be implemented over the subsequent years though more specific decisions and legislation.

Education reform was backed by increased in public expenditure, supporting the introduction of new institutions. While most schools did not operate on a preferential basis the targeting of rural areas and poor household had the effect of increasing schooling attendance for the Malay community. Other affirmative action policies were more direct, creating dedicated institutions for Bumiputera as well as introducing quota systems and grants for university enrolment¹⁷³. An example of such schools were the junior residential colleges, created in response to

¹⁶⁷ Data extracted from <http://data.worldbank.org/country>, 2016 or latest year available

¹⁶⁸ The NEP was followed by several economic plans which will not be detailed as part of this research

¹⁶⁹ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. *Journal of Contemporary Asia*, 42(2), pp.230-254.

¹⁷⁰ idem

¹⁷¹ Expenditure for poverty eradication was at first at least the double amount of the restructuring expenditure, for example poverty eradication expenditure was six million dollars between 1976-80 versus two million dollars for restructuring. Between 1981-1983 the expenditures were respectively six and five million dollars.

Ratuva, S. (2013). The politics of preferential development: Affirmative action and trans-global study. ANU Press, Chap.8.

¹⁷² Lee, H. (2010). Racial Inequality and Affirmative Action in Malaysia and South Africa. PHD. University of Massachusetts.

¹⁷³ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. *Journal of Contemporary Asia*, 42(2), pp.230-254.

the increasing demand for trained technicians and scientist as part of the industrialisation of the Malaysian labour market in the 70's¹⁷⁴.

The increased numbers of secondary school graduates created a mismatch in the market for education. In lack of capacity, tertiary institutions were only able to provide entrance for a fifth of candidates¹⁷⁵. While the proportional participation of Malays in education had increased, the increase had been detrimental to the proportional participation of Chinese and Indian students, who for lack of other options turned to overseas education or private institutions.

The goal of affirmative action in the labour market was to realign its distribution in a way that “*reflected the racial composition of the population*”¹⁷⁶. However, there were notably no numerical targets or timelines included to accompany this goal. Affirmative action interventions ended up being mainly confined to the public sector, with government bodies being the main driving force behind the urbanisation of and formalisation of employment for Malay populations¹⁷⁷. This resulted in a public administrative sector where Bumiputera went from representing 62% of sector employees in the 1980 to around 84.8% in 2005¹⁷⁸. A positive spill over effect despite the absence of mandated preferential action for others sectors was an *effect of sorts* deriving from the public policy: Malays candidates were given preference in other administrative statutory institutions notably in teaching jobs¹⁷⁹.

The Industrial Coordination Act of 1975¹⁸⁰ is one of the few affirmative action laws enacted by the government to regulate the private sector. It required that large-scale manufacturers align their employee base on proportions similar to that of the population. For low-skilled ranks, compliance for the various companies turned out to be relatively easy as many workers, especially women from rural areas looked for employment in the newly built textile or electronics manufactures¹⁸¹. The ranks were however more difficult to fill for managerial positions. Lee (2012) suggests that the impact of the Act in terms of increasing representation at managerial level was limited and only involved “*non-technical responsibilities such as personnel management*”¹⁸².

In sectors other than manufacturing, no legislation regulates practices however some companies have chosen to adopt a somewhat diverse employee “base”, such as is for example the case of banks employing a representative

¹⁷⁴ Leete, R. (2007). Malaysia: from Kampung to Twin Towers, 50 years of economic and social development. Asian-Pacific Economic Literature.

¹⁷⁵ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. Journal of Contemporary Asia, 42(2), pp.230-254.

¹⁷⁶ Ratuva, S. (2013). The politics of preferential development: Affirmative action and trans-global study. ANU Press, Chap.8.

¹⁷⁷ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. Journal of Contemporary Asia, 42(2), pp.230-254.

¹⁷⁸ Idem

¹⁷⁹ Idem

¹⁸⁰ The Industrial Coordination Act (1975), Malaysian Industrial Development Authority, Malaysia

¹⁸¹ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. Journal of Contemporary Asia, 42(2), pp.230-254.

¹⁸² Idem

workforce for services jobs (although the profile of management tends to be more “traditional”¹⁸³). The 2007 Federal Budget called for large-scale companies to engage in corporate social responsibility operations, including the development of *ethnic diversity and human capital*¹⁸⁴. In 2008 a further measure was added requiring that companies report on the composition of their workforce (race and gender). However, no incentives for compliance or sanction in case of non-compliance were provided along the measure.

Affirmative action has sought to address the under-representation of Malays at managerial level. Intervention at this level was once again characterised by the use of a state-supported approach. The Government provided numerous grants to public enterprises that were reserved for Bumiputera management. Enterprises were created in sectors such as manufacturing, constructing or agriculture. In the 1980 other sectors such as automobile, steel and cement were to be launched; however along with changes in the economic environment (industrialisation and globalisation) there was a shift in policy from public intervention to capitalism, requiring the privatisation of public-owned enterprises¹⁸⁵. However, these enterprises were passed on to individuals picked through political connections rather than through an actual competitive selection.¹⁸⁶ This process was a striking failure, with many of these entities being re-nationalised during the 1997 economic crisis. To this date, government linked enterprises still constitute a significant part of Bumiputera representation at managerial level¹⁸⁷. A 2016 commentary on affirmative action by Chin¹⁸⁸ notes that the implementations of these measures have forced non-Malay businesses to operate using “Ali Baba” tactics. In this setting, the business is on paper the property of a Malay citizen (“Ali”) while the operations are in reality under the control of Chinese ventures (“Baba”). He further denotes that affirmative action measure have lead to the creation of a state-dependency situation for many Malay employees or business owners.

When studying ethnic diversity in Malaysian company boards, Gul, Munir and Zhang, (2016) find no incidence, positive or negative on the economic performance of the firm being directed by either Malay or non-Malay boards. They denote that ethnic diversity at low level has a positive correlation with economic performance, while at high level, ethnic diversity has a negative incidence on performance¹⁸⁹. Abdullah (2013) also obtains mixed results when conducting a similar study on the impacts of diversity in company boards. While the author finds a positive link between return on investment and board ethnic diversity, he denotes that gender diversity and age diversity appear to have a negative impact on returns. Abdullah (2013) further suggests that the introduction of quotas for women representation in company boards in 2011¹⁹⁰ has lead to the appointment of

¹⁸³ Ratuva, S. (2013). The politics of preferential development: Affirmative action and trans-global study. ANU Press, Chap.8.

¹⁸⁴ Lee, H. (2010). Racial Inequality and Affirmative Action in Malaysia and South Africa. PHD. University of Massachusetts.

¹⁸⁵ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. *Journal of Contemporary Asia*, 42(2), pp.230-254.

¹⁸⁶ Idem

¹⁸⁷ Idem

¹⁸⁸ Director of the Asia Institute at the University of Tasmania in Australia.

¹⁸⁹ Gul, F., Munir, S. and Zhang, L. (2016). Ethnicity, politics and firm performance: Evidence from Malaysia. *Pacific-Basin Finance Journal*, 40, pp.115-129.

¹⁹⁰ 30% of seats in company boards for listed companies to be allocated to women

women in such positions due to family ties rather than through competitive selection, which in turn might explain the lower rate of economic performance.¹⁹¹

While ownership of enterprises remains a sector where Bumiputera are underrepresented (Chinese inhabitants are the majority of owners), Bumiputera representation in technical and professional categories has increased to a steady representation, concerning 60% of employees¹⁹². Categories such as teaching and nursing have the higher representation of Bumiputera (around 70 with an increase of 20 % since the 1970). These professions are again representative of the instrumental role played by the Malay state in improving Bumiputera representation. The trend remained stable in 2005, demonstrating the continued importance of public intervention. Lee (2017)¹⁹³ points out that affirmative action in public administration has become redundant as applicants in this sectors in 2007 were only 1.8% of Chinese ethnicity and 2.5% of Indian ethnicity. The extensive introduction of affirmative action in the public sector has not emulated into the private sphere, is has on the contrary had effect of dividing ethnic representation between public and private sectors.

When hiring in the private sectors, overseas graduates are recognised by employers as having better qualifications. Because overseas graduates are for the large majority non-Malay (only 8% Bumiputera), this perception operates in the disadvantage of Malays populations¹⁹⁴. In a 2005 World Bank survey, employers pointed out insufficient qualifications, notably in terms of English proficiency (40%) and technical skills (14%) as being the principal shortfalls of Malay candidates¹⁹⁵.

Generally speaking the Malaysian employment market is characterised by high representation of Bumiputera among public institutions while private institutions are still primarily non-Malay, for example Bumiputera account for only 40% of private sector professional and again 40% of managers. This shows that affirmative action measures have been primarily enforced in the public sector and that Bumiputera entry into the private sector remains the principal challenge for future policy.

2.3.4 Diversity Management

Research on diversity management in the context of Malaysian enterprises is very scarce, however some lessons on the business environment of the country can be derived from HR research in the country. In a 2011 study of 171 manufacturing firms on the peninsula, Tan et al., find that firms who dedicated resources to training of employees and performance appraisal had better innovation scores. Additionally the two HR practices were also

¹⁹¹ Abdullah, S. (2013). The causes of gender diversity in Malaysian large firms. *Journal of Management & Governance*, 18(4), pp.1137-1159.

¹⁹² Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. *Journal of Contemporary Asia*, 42(2), pp.230-254.

¹⁹³ Lee, H. (2017). Majority Affirmative Action in Malaysia: IMPERATIVES, COMPROMISES AND CHALLENGES. Global centre for pluralism. Institute for Southeast Asian Studies, March 2017, pp.1-24.

¹⁹⁴ Lee, H. (2010). Racial Inequality and Affirmative Action in Malaysia and South Africa. PHD. University of Massachusetts.

¹⁹⁵ World Bank (2005) Malaysia: Firm Competitiveness, Investment Climate, and Growth, Poverty Reduction, Economic Management and Financial Sector Unit (PREM), East Asia and Pacific Region. Report No.26841-MA.

positively linked with knowledge management effectiveness.¹⁹⁶ Similarly, a 2009 study finds that teamwork; training and performance appraisal had positive effects on business performance of Malaysian private firms¹⁹⁷. A divide remains across enterprises, with Malay-owned companies employing a majority of Malay employees while Chinese owned firms employed a majority of Chinese workers. Ethical diversity is more common in international companies. However, while different origins appeared to interact and mix during work-time, cross-ethnic relations were confined to business environments and did not extend to private settings.¹⁹⁸ A report by Micheal Page¹⁹⁹ on the Malaysian business environment in 2017 notes that 94% of companies report being supportive of diversity and inclusion, especially in terms of career progression. Companies most often reported investing in diversity programs regarding women (47%), followed by age (40%) and ethnic group (25%). The positive note of these results might partially be due to self-reporting effects, nonetheless they serve to demonstrate awareness of diversity management practices in the country.

As we have seen in this section, the Malaysian model distinguishes itself in that it relies heavily on state funding and state intervention rather than legislative instruments. As such, the South African model appears to be more similar to that of Canada rather than Malaysia. All together, the three models presented in this section provide points for comparison but each take on a distinctive approach. Before assessing labour market results of implementation, the third section of the research will provide a recapitulative table as well as a comparative overview of national models. Following this overview, the research will address policy results and implications.

¹⁹⁶ Tan, C. and Nasurdin, A. (2011). Human Resource Management Practices and Organizational Innovation: Assessing the Mediating Role of Knowledge Management Effectiveness. *The Electronic Journal of Knowledge Management*, 9(2), pp.155-167.

¹⁹⁷ Abdullah, Z., Ahsan, N. and Alam, S. (2009). The Effect of Human Resource Management Practices on Business Performance among Private Companies in Malaysia. *International Journal of Business and Management*, 4(6).

¹⁹⁸ Montesino, M. (2011). Cross-cultural conflict and affirmative action: Inter- and intra-ethnic dilemmas of Malaysia's heterogeneous workplace. *International Journal of Cross Cultural Management*, 12(1), pp.115-132.

¹⁹⁹ Worldwide employment and recruitment group

PART III: LESSONS FROM THEORY AND PRACTICE

3.1 Assessing three distinctive models

One evident difference between the three models is the rationale leading to implementation, which is specific to each context. While for Canada the issue was that of addressing employment discrimination, in Malaysia and South Africa affirmative action came as an imperative response to critical situations following the social movement in 1969 and the end of Apartheid period. Malaysian and South African measures were also accompanied by specific economic goals in terms of reducing poverty among the beneficiary group. Table 1.4 details the main lines of implementation in the countries of reference.

Table 1.4 Comparative perspectives on affirmative action

	Canada	South Africa	Malaysia
Instruments	Canadian Constitution (1982), Human rights legislation (1985), Employment Equity Act (1986)	Constitution of the South African Republic (1996) Employment Equity Act (1998) Skills Development Act (1998) Broad-Based Black Economic Empowerment Act (2003)	Malaysia Federal Constitution (1957) New economic policy and following economic plans (1969) Industrial Coordination Act (1975)
Designed group	Women, Visible minorities Aboriginal people Persons with disabilities	BEE (2003): African, Coloured, Indian, and South African of Chinese origin. EEA(1998): as above + disabled workers and women irrespective of origin	Malay / Bumiputera populations
Implementation	Federally regulated sectors and Federal Constructors	Private and Public sectors	Public sectors, development of state-owned enterprises
Enforcement and support	Reporting and Penalties	EEA: reporting and penalties BBE: scorecard and incentives	Monetary incentives and public funding
Method	Goals and Timetables	Goals and Timetables	Quotas Absence of timelines and targets
Diversity Management	Advanced implementation	In infancy, mainly compliance with legislation	Scarce implementation in private companies

It is often the case that the Malaysian model of affirmative action is compared with the implementation model chosen by South African Republic, notably because both countries were dealing with the implementation of affirmative action as a remedy to past discrimination occurred to their majoritarian ethnic group. However, on a closer look the two models have a rather distinctive approach, with the South African model being closer to that of Canada. The Malaysian approach has been state centred and public sector centred with the use of quotas and the creation of state-supported enterprises for the advancement of the Bumiputera populations. Because affirmative action in Malaysia is correlated with issues of economic disparities, plans for implementing affirmative action have been primarily derived from economic policies. South Africa and Canada have adopted a legislative approach to implementation, with both countries issuing an Employment Equity Act that includes obligations and penalties for enterprises covered by the regulation. Both countries also introduced a voluntary scheme; BEE in South Africa and the Federal Constructors Program in Canada. The principal distinctive feature of the South African model is the wider scope of legislation, as it applies to both public and private sectors on a large scale. While private companies are required to align with Employment Equity Legislation in South Africa, in Canada, there is no obligation for private companies to engage in similar actions, however is it often the case as diversity management practices have successfully developed in the country. In Malaysia, only the Industrial Coordination Act regulated the private environment and results following the implementation have been mixed, with low level of compliance at managerial level. To advance ownership and occupational status of its native populations, Malaysia has opted for sustained public funding and the development of state-ownership of enterprises.

When looking at best practices, Jain and Hackett (1989) describe successful affirmative action programs as providing “ *accountability, numerical goals, monitoring and control mechanisms, on-going publicity, employment practice reviews and special recruitment and training efforts*”²⁰⁰. Accountability refers to business practices rather than statutory regulations. Accountability can help improve implementation results, using a linkage between diversity results and manager compensations. The use of numerical goals and control mechanisms and can be observed in both South Africa and Canada, where employers are required to review policies, eliminate barriers to employment, develop equity plans and undertake a yearly workforce analysis. In South Africa, there is a requirement to create positions in the workforce for formerly disadvantaged groups²⁰¹, similar to the use of reservations for Bumiputera employees in Malaysia. Such provisions do not exist in the Canadian context. Special training efforts have been implemented in South Africa via the SETA (Sector Education and Training Authorities) despite mixed results while Malaysia has provided training in the form of increased educational funding. In Canada, training and development is primarily provided through company policy. The three models share the common features of having been primarily focused on increasing numerical representation and having been implemented in past contexts, which do not necessary reflect the current national economic and societal conditions.

²⁰⁰ Jain, H. and Hackett, R. (1989). Measuring Effectiveness of Employment Equity Programs in Canada: Public Policy and a Survey. *Canadian Public Policy / Analyse de Politiques*, 15(2), p.189.

²⁰¹ Thomas, A. and Jain, H. (2004). Employment equity in Canada and South Africa: progress and propositions. *The International Journal of Human Resource Management*, 15(1), pp.36-55

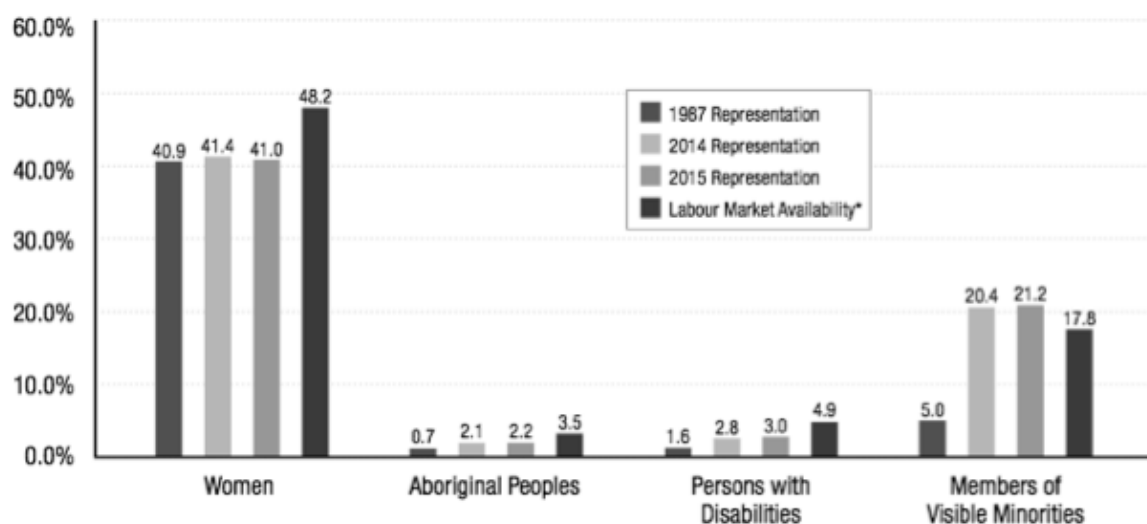
3.2 A labour market analysis

This section aims at analysing the changes in the labour market following the implementation of affirmative action measures in the countries of reference. Data collection has primarily been conducted through the use of governmental reports and country statistical data available online. The countries have been analysed across three main lines: changes in representation in the labour market, occupational status and income evolution for the beneficiary groups.

3.2.1 Canada

In Canada, the Employment Equity Act has led to a steady, although relatively slow, increase in representation over the years. Figure 1.1 shows the evolution in the Federally Regulated sector between 1987 and 2015²⁰². *Labour market availability* indicates percentage representation of the group in the total labour force. The increase in women employment has been limited, however women representation in the Canadian Federal enterprises is relatively close to their market availability. Notable improvements have been achieved for aboriginal people and people with disabilities, who's share among the workforce has doubled over the years. The most encouraging achievement of the program has been the increase in representation among visible minorities, with the group obtaining a higher representation score compared to their labour market availability.

Figure 1.1 Representation of designed groups in Federally Regulated Sector²⁰³



²⁰² Latest available report, Employment Equity Act Annual Report (2016) Employment and Social Development, Canada

²⁰³ Figure extracted from the Employment Equity Annual Report. (2016). Employment and Social Development Canada

While some researchers have criticised the slow pace of the program, notably in terms of women representativeness²⁰⁴, there is little doubt that the Canadian Employment Equity Act has achieved what it had set out to do: improve the representation of designed groups among federally directed agencies. However, the numbers only reflect the situation for 2% of the total labour force. An overlook of the integration in the labour market of visible minorities outside of this program will be provided hereunder.

At the time of writing, the collection of data for the Canadian Census 2016 is on-going, with results relative to the labour market scheduled for November 2017²⁰⁵. The data used in the following section have been collected during the 2011 Census and as such the research acknowledges that the results obtained will need to be reassessed once new data is made available.

In 2011, visible minorities amounted up to 20% of the Canadian population²⁰⁶. Minority women (ages 25-54) had higher rates of unemployment when compared to non-minority employees, with respectively nine and five per cent. The same conditions were true for minority men, which had an unemployment level of 7.2% versus 6% for non-minority men²⁰⁷. The tendency was true across all age categories and qualification levels, suggesting a disadvantage for minorities in the labour market. However, a large part of the difference in unemployment for minorities were explained by unemployment of immigrant workers as opposed to Canadian-born minorities. The narrowed gap between Canadian-born and other Canadian groups (non-minorities) indicates more positive prospects for second generations.

Similarly, the median salary for non-minorities, all levels of education included was 31,085 \$. The median revenue for first generation visible minorities was lower, at 26,145 \$, however second generations median salaries exceeded the median of non-minorities at 32,252 \$²⁰⁸. The results validate the idea that while first generations might be disadvantaged due to factors such as lack of work experience in the country of language barriers²⁰⁹, the tendency tends to resorb along with the acculturation process.

In terms of occupational distribution, as seen in Figure 1.2, visible minorities had lower rates of representation compared to the total workforce in senior and middle management positions as well as skilled crafts and trades, and were overrepresented in professional interim and sales sectors. However, there was no steep underrepresentation of minorities at any position level, suggesting that while disparities in the labour market do occur, correcting may be achieved through policy orientation. A 2011 report also noted that visible minorities

²⁰⁴ C. Jain, H., J. Lawler, J., Bai, B. and Lee, E. (2010). Effectiveness of Canada's Employment Equity Legislation for Women (1997-2004): Implications for Policy Makers. *Relations industrielles*, 65(2), p.304.

²⁰⁵ Statistics Canada, <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/index-eng.cfm>

²⁰⁶ Census 2011, Canada, Table 2 Visible minority population and top three visible minority groups, selected census metropolitan areas, Canada, 2011. [online] Available at: <http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-010-x/2011001/tbl/tbl2-eng.cfm>

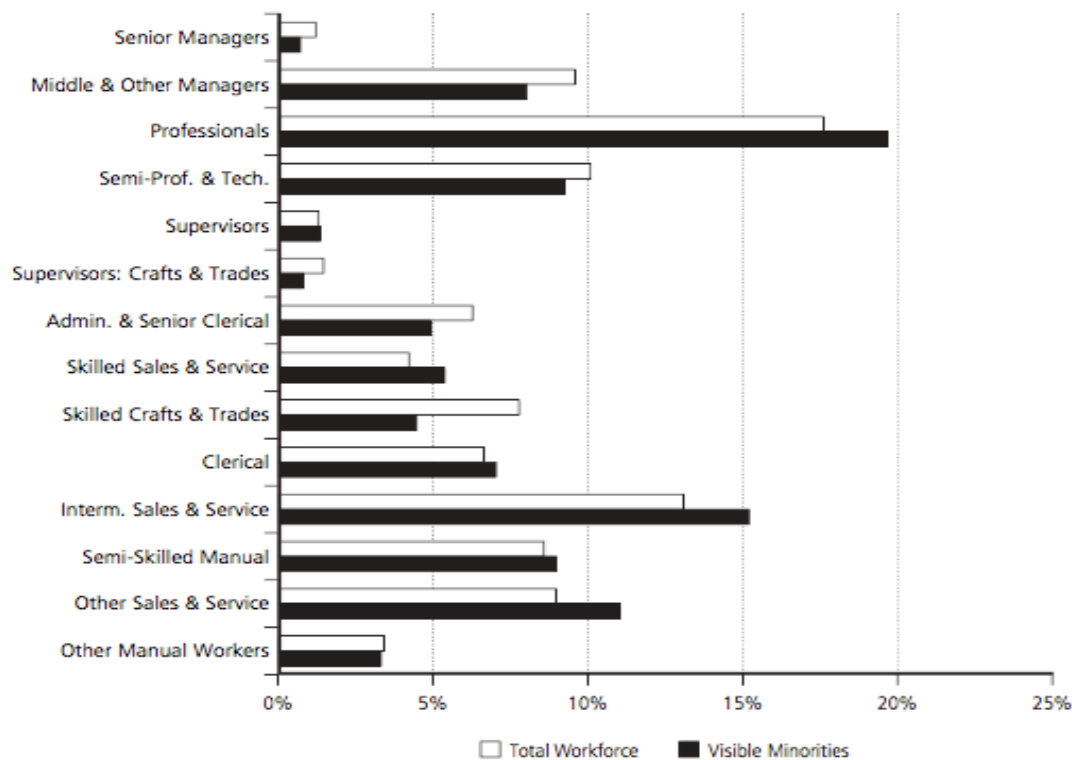
²⁰⁷ Statistics Canada, <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/index-eng.cfm>

²⁰⁸ Statistics Canada, <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/index-eng.cfm>

²⁰⁹ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). *International handbook on diversity management at work*. Edward Elgar Publishing, pp.68-80; 218-240;.

had better credential when compared to the total population with 30% (vs. 21%) of them having a university degree²¹⁰.

*Figure 1.2 Occupational distribution*²¹¹



3.2.2 South Africa

The 2016 annual report for employment equity noted an improved representation for workers of African descent, at top management level, however this representation did not hold across job levels, with blacks still being overrepresented in low-tier, unskilled jobs. For the most part, occupational distribution was also uneven between sectors, with Blacks being primarily employed in the public sector while white employees were overrepresented in the private one. At unskilled level, whites only represented 0.5% of the workforce while blacks represented 73% of all employees²¹². The 0.64 Gini coefficient score obtained by the country in 2014

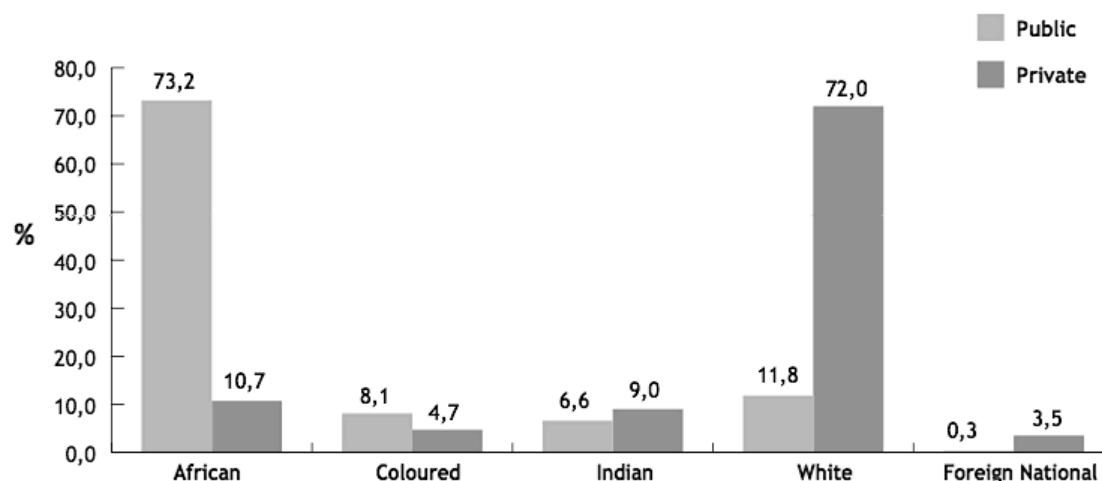
²¹⁰ Labour Employment Equity Data Report. [online] Employment and Social Development Canada. Available at: <http://www12.hrsdc.gc.ca>

²¹¹ Figure extracted from Labour Employment Equity Data Report. [online] Employment and Social Development Canada. Available at: <http://www12.hrsdc.gc.ca>

²¹² Commission for Employment Equity Annual Report 2016 - 2017. (2017). South Africa: Department of Labour Chief Directorate of Communication.

further indicated issues of unequal wealth distribution²¹³. According to the World Bank, an estimated wealthy 20% held on to 65% of the total country income (2016). The labour market also faced with high unemployment rates, reaching an all times high at 27% in 2016²¹⁴. Despite persistent inequalities among lines of ethnicity, there has been an evolution of skills for Black South African workers since 1994 with an increase of 8% (from 10 to 18% of workers) in the higher skilled categories workers and a subsequent decrease of 7% for unskilled workers (from 40% to 33%)²¹⁵.

Figure 1.3 Occupational Profile at Top Management level²¹⁶



Subsequently, the market records large disparities in income, as show in figure 1.4. In 2011 for example, white workers earned on average five times more than Blacks. Unemployment rates were also inequality distributed. For example, in 2005 unemployment concerned 31% of blacks and 22% of Coloured workers but only 4.9% of whites²¹⁷. In 2008, while unemployment had also affected white workers (10%) but was still more frequent for Blacks (27%)

Table 1.5 Average monthly income (ZAR constant 2008)²¹⁸

	African	Coloured	Indian	White
1993	2,104	3,382	5,421	10,803
1997	2,969	3,017	5,270	9,508
2001	2,588	3,834	6,315	11,162
2005	3,118	4,381	6,940	12,026
2008	2,576	3,362	7,350	11,240

²¹³ Gini coefficients range from 0= equality to 1= inequality. For reference 0.305 in the Netherlands, data from OECD.org, <http://www.oecd.org/social/income-distribution-database.htm>

²¹⁴ <http://data.worldbank.org>

²¹⁵ Commission for Employment Equity Annual Report 2016 - 2017. (2017). South Africa: Department of Labour Chief Directorate of Communication.

²¹⁶ Figure extracted from the Annual Equity Report, SA, 2017

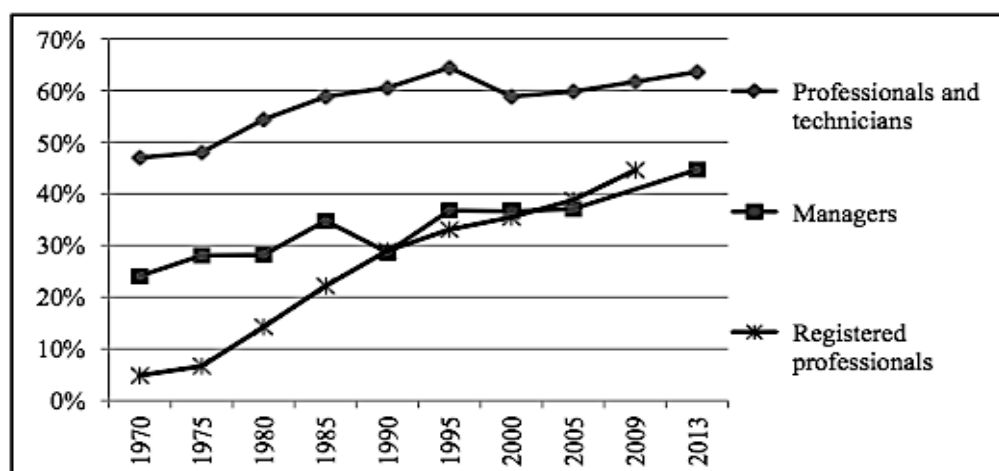
²¹⁷ : Employment and Inequality Outcomes in South Africa. (2010). Southern Africa Labour and Development Research Unit (SALDRU). School of Economics, University of Cape Tow.

²¹⁸ Data extracted from Employment and Inequality Outcomes in South Africa. (2010). Southern Africa Labour and Development Research Unit (SALDRU). School of Economics, University of Cape Tow.

3.2.3 Malaysia

In Malaysia, affirmative action measures have been instated over four decades ago and have amounted to positive results in terms of reducing inequality across lines of ethnicity. Poverty has also steadily decreased over the years, with a poverty headcount ratio of only 0.3% in 2009²¹⁹. Under the New Economic Policy, Bumiputera populations have successfully entered new sectors such as transportation or communication, previously run quasi-exclusively by Chinese or Indian Malays²²⁰.

Figure 1.4 Evolution of Bumiputera representation in high level occupations²²¹



As shown in Figure 1.4, the share of registered professionals (engineers, teachers, doctors) among Bumiputera inhabitants has increased from 6% in 1970 to 45% in 2013. The proportion of Chinese employees in the managerial categories remained higher than that of Bumiputera, with respectively 37% and 52% in 2000, mainly due to a lack in experience and skill among the Bumiputera population²²². It is important to note that the public sector had an instrumental role in the advancement of Malay population, resulting in a large dependency of affirmative action programs on government financing. The number of public-owned enterprises had increased from 109 to 1149 between 1970 and 1992²²³.

²¹⁹ Percentage of population living with less than 1.90\$ a day, for comparison in South Africa 16.6%. Data extracted from <http://povertydata.worldbank.org/poverty/country/MYS>

²²⁰ Lee, H. (2015). Affirmative Action in Malaysia and South Africa: Contrasting Structures, Continuing Pursuits. *Journal of Asian and African Studies*, 50(5), pp.615-634.

²²¹ Figure extracted from Lee, H. (2015). Affirmative Action in Malaysia and South Africa: Contrasting Structures, Continuing Pursuits. *Journal of Asian and African Studies*, 50(5), pp.615-634.

²²² idem

²²³ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. *Journal of Contemporary Asia*, 42(2), pp.230-254.

Table 1.6 Median monthly income by household²²⁴

	1970	1984	1995	2002	2009	2012	2014
Malaysia total	166	719	1,377	2,049	2,830	3,626	4,585
Bumiputera	120	583	1,143	1,695	2,531	3,282	4,214
Chinese	268	1,060	2,010	2,943	3,631	4,643	5,708
Indians	194	775	1,553	2,272	2,836	3,676	4,627
Others	250	1,399	899	1,542	2,088	3,762	4,372

Table 1.6 shows the evolution in median incomes by ethnic group for Malaysia during the 1970 to 2014 period. While the salary of Bumiputera inhabitants has remained inferior to that of Chinese Malay, over the years, the gap between the two has narrowed down. In 1970 Chinese populations earned 55% more than Bumiputera inhabitants; starting 2009 they “only” earned 30% more. The progression was somewhat slower between 2009 and 2012 but by 2014 the difference was 26%. While progress still needs to be achieved, by 1995 Bumiputera income was close to the average of the total population, suggestion an overall decrease in poverty for the group.

3.3 A critical analysis of labour market results

While the results discussed above point an overall more successful implementation in Malaysia and Canada, all three policies have equally suffered from public backlash over the years. In a recent analysis of the Malay society, Tajuddin (2014)²²⁵ points that the policies implemented, while aimed at improving economic and educational opportunities for all have widened inequalities across the peninsula. The author points out that the inclusive design of the policy (all Bumiputera inhabitants) meant that privileges were handed out to both the better off populations at the same time as poorer population, creating intra-ethnic disparities. Higher incomes families also had a tendency to be more informed about the implications of the policies and were able to better “position themselves in the pursuit of opportunities”²²⁶. Wealthier Malays had greater proximities with authorities and were able to influence the attribution of funds, for example in the case of attributing scholarship where there was a heavy bias towards richer Malays. The remarks made by the author are similar to those made by Lee (2012) mentioning that in a first time at least, most Malay university graduates belonged to urban, richer families²²⁷. While inequalities among lines of ethnicity were resorbing, further lines of inequality were developing in terms of class membership. Other economic policies implemented as part of the NEP such as business funding were directed to both Malay and non-Malay, leading to a statement in 2010 by the National Advisory Council that income growth had been disproportionate and had more strongly affected the top 20%

²²⁴ Data collected from Median Monthly Gross Household Income by Ethnic Group, Strata and State, Malaysia, 1970-2014. [online] Available at: <http://www.epu.gov.my/en/content/table-3-median-monthly-gross-household-income-ethnic-group-strata-and-state-malaysia-1970>

²²⁵ Tajuddin, A. (2014). Malaysia in the world economy (1824-2011). Lanham, MD: Lexington Books, Chapter 7.

²²⁶ Idem

²²⁷ Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. *Journal of Contemporary Asia*, 42(2), pp.230-254.

with a very slow increase for the bottom 40% of inhabitants²²⁸. Similarly, in South Africa the measures were accused of creating a “black diamond class” composed of a few better off inhabitants that had become wealthy following the end of the Apartheid period²²⁹.

Cases of “window dressing” were common in both Malaysia and South Africa. In Malaysia, they concerned “Ali Baba” tactics employed to increase Chinese business ownership, while in South Africa recruitment of Black employees occurred as a means to fulfil numerical goals, with given job positions often having little to no decisional power²³⁰. “Hiring for numbers” has also led to a situation where recruitment has largely been preferred over training of internal candidates, decreasing upward mobility²³¹. Further issues have been raised in South Africa with regard to the Employment Equity Act treating women as a homogenous category, making no difference between black women and white women. Reporting on the EEA does not require companies to distinguish the percentage of men and women among their target group, meaning that companies might fulfil their racial goals and women representativeness goals without employing the required number of Black²³² women²³³.

In Canada, when excluding the political debate, the policy has raised lesser concerns, perhaps due to its narrower scope. Criticisms are mainly focused around two areas of the policy: its slow pace in terms of improving women’s representation²³⁴ and its “discriminatory” and “obsolete” aspect. In a 2017 article, Frances Woolley, an economy professor at Carleton University, notes that the term “visible minorities” is no longer representative of the Canadian context, as this group now accounts for a substantive part of the population. He considers that the term “*was written for another time ... when the workforce was majority male, when the population was overwhelmingly white*”²³⁵. Further he notes that while some inequalities exist in the labour market, a considerable amount of “visible minorities” benefit from a good economic well being, sometimes even surpassing the revenues of their Caucasian peers. The professor suggests that policies should be redirected at more specific groups among the now “*visible minorities*” category, with a larger focus on credential recognition or development of language skills as opposed to improving numerical representation²³⁶.

²²⁸ Tajuddin, A. (2014). Malaysia in the world economy (1824-2011). Lanham, MD: Lexington Books, Chapter 7

²²⁹ Horwitz, F. and Jain, H. (2011). An assessment of employment equity and Broad Based Black Economic Empowerment developments in South Africa. Equality, Diversity and Inclusion: An International Journal, 30(4),

²³⁰ As mentioned in Part II

²³¹ Horwitz, F. and Jain, H. (2011). An assessment of employment equity and Broad Based Black Economic Empowerment developments in South Africa. Equality, Diversity and Inclusion: An International Journal, 30(4),

²³² Read African, Coloured, Indian, and South African of Chinese origin.

²³³ Thomas, A. and Jain, H. (2004). Employment equity in Canada and South Africa: progress and propositions. The International Journal of Human Resource Management, 15(1), pp.36-55

²³⁴ C. Jain, H., J. Lawler, J., Bai, B. and Lee, E. (2010). Effectiveness of Canada’s Employment Equity Legislation for Women (1997-2004): Implications for Policy Makers. Relations industrielles, 65(2), p.304.

²³⁵ National Post. (2017). Have Canada's changing demographics made it time to retire the concept of ‘visible minority’?. [online] Available at: <http://nationalpost.com/news/canada/have-canadas-changing-demographics-made-it-time-to-retire-the-concept-of-visible-minority/wcm/703d5001-e954-4ad8-b7d6-1eeefe8f5207>

²³⁶ Idem

3.4 The role for Human Resource Management and Diversity Management

A 2007 Canadian survey on the Career Advancement for visible minorities found that in the private market, employees from all group showed commitment to their employer and reported being willing to put in “extra effort” for the success of the organisation. Nonetheless, visible minority respondents reported lower job satisfaction levels than their counterparts. The study found that minorities experienced the workplace differently, with fewer individuals considering that the organisational process was fair (in terms of diversity management and job advancement opportunities). Most individuals reported that while their organisation had practices in place providing care for diversity, they had seldom observed senior management commitment. They further denoted a bias in the attribution of high-visibility assignments and training opportunities²³⁷.

More recently, the 2015 annual report card of FB500 boards²³⁸ indicated a lack of diversity among board members. This was explained at company level by policies of always choosing “best” candidates, irrespective of ethnicity and/or gender, the lack of skills and expertise among the designed group for the position and at time a lack of willingness from directors to change the composition of boards²³⁹. This inertia at top management level showed that while in Canada, diversity management is a common practice; there is still a need for cultural change within organisations. Nonetheless, most directors indicated to be in favour of diversity, with 55% expressing that diversity was very important and 41% somewhat important²⁴⁰.

In both South Africa and Malaysia, managing diversity has yet to be regarded as strategic opportunity, with business culture in both countries being more preoccupied with compliance rather than private initiative. Implementation of diversity management will require that companies dedicate special resources to the process, building upon a set of best practices. These practices include:

- The development of a new set of values and a common vision for change
- The adoption of a HR perspective on human capital, recognising every individual as a resource
- Establishing a link between business activities and community well-being
- Developing, explaining and promoting the appreciation of cultural differences
- Encouraging the creation of diverse teams and intergroup cooperation
- Investing in training and development plans
- Promoting accountability at all management levels
- Translating the practice in all business activities including after-work and company sponsored events
- Identifying and addressing concerns from all groups²⁴¹.

²³⁷ Advancement in Corporate Canada : A Focus on Visible Minorities Survey Findings. (2007). Ontario Ministry of Citizenship and Immigration, Catalyst and the Diversity Institute in Management and Technology, pp.1-64.

²³⁸ Ranking of biggest Canadian enterprises by revenue

²³⁹ Annual Report Card. , (2015). Canadian Board Diversity Council, pp.1-36.

²⁴⁰ Idem

²⁴¹ Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). International handbook on diversity management at work. Edward Elgar Publishing, pp.68-80; 218-240;.

Changes in business culture for these two countries, after years of state directed affirmative action might require an extended period of time, however effective implementation of these managerial tactics constitute an effective response to current issues faced at national level. When compared to the Canadian context, business environments in both Malaysia and South Africa are more likely to be under pressure to implement diversity measures. Increasing pressure on organisations towards change may lead to a “*resistance response*” from within the organisation characterised by factors such as “*defiance, avoidance and manipulation*”²⁴² (this is notably the case in Malaysia and South Africa with practices such as window dressing). The shift from resistance or simple legislation compliance to integration of HR diversity practices is unlikely to be feasible in a single time. A first step for enterprises is to acknowledge diversity and adopt negotiating tactics between groups (address issues by providing each group with possibilities to express their concerns) aiming to create a stable working environment²⁴³. Additionally, enterprises could appoint a member from each group as part of a diversity board, insuring equality of voice during meetings. A further step, once the company has effectively secured cooperation among groups is the promotion of diversity management strategies (answering the question: why we as company believe in implementing such strategies?). Promotion can be done either via internal communication or meetings and seminars. Research on organisational change indicates that increased support for “change” can be achieved by encouraging participation of the workforce in the change process, such as for example collecting opinions and ideas from the workforce²⁴⁴. Following this stage, companies will need to address issues of strategy adoption, feedback and if necessary continuous reengineering of diversity management programs.

²⁴² Dass, P. and Parker, B. (1999). Strategies for managing human resource diversity: From resistance to learning. *Academy of Management Executive*, 13(2), pp.68-80

²⁴³ Dass, P. and Parker, B. (1999). Strategies for managing human resource diversity: From resistance to learning. *Academy of Management Executive*, 13(2), pp.68-80

²⁴⁴ Cummings, T. and Worley, C. (2010). *Organizational development and change*. Toronto: Nelson Education.

Conclusion:

Contributing to the on-going debate on the use of affirmative action, the study has provided an overview of national implementations in South Africa, Canada and Malaysia. After an overview of affirmative action as understood by academic literature, the research has provided an overview of national implementations. In a third time, the results brought about by these measures have been analysed through the lens of economic indicators. This approach was designed in order to assess whether affirmative action measures have been efficient in addressing ethnic disparities in the labour market.

What lessons can be drawn from the implementation of affirmative action in South Africa, Malaysia and Canada?

The research has focused on three distinctive models of affirmative action implementation. In Canada, employment equity legislation regulates federal sectors while voluntary private initiatives operate in other business environments. In South Africa, employment equity legislation has also been expanded to private sectors while the Malaysian implementation relies primarily on public funding and state directed job creation rather than legal instruments. One notable similarity between all countries is the implementation of affirmative action in public sectors, perhaps referring back to the idea that public sectors should be representative of the population. Because implementation is closely related with national contexts, “best practices” of affirmative action are unlikely to be directly transferable from one country to another. For example, state interventionism has yielded good results in Malaysia but may prove unsustainable in South Africa with the country facing an economic downturn since 2010²⁴⁵. Similarly, the adoption of strict employment legislation in private sectors might discourage multinational corporations from investing in the Malaysian industry. The Canadian *laissez-faire* approach to private sectors is also unlikely provide good results in Malaysia and South Africa, where diversity management practices are still in infancy. Countries may of course still learn from one another, keeping in mind that “good” affirmative action policies are primarily required to be sensitive of national circumstances.

In which way did these measures affect ethnic parity in the labour market? Alternatively, can human resource practices aid in achieving these goals?

The analysis has revealed both positive and adverse results for all three countries. While affirmative action has been a useful tool in redressing the numerical representation of the designed groups, the increase in numbers has not always been accompanied by a suppression of discriminatory practices. Perhaps the most evident example is that of South Africa, where despite intensive implementation, Blacks were still vastly underrepresented in both the public sectors and upper-management positions. The lack of skilled individuals among the target group translated into income disparities, with target groups being visibly disadvantaged. Implementation in Canada despite being limited to federal enterprises provides the most positive results. The gap between minorities and non-minorities was small compared to the two other countries, but inertia at top management level suggested a slow acceptance of diversity models in company culture. However, when looking at implementation strategies,

²⁴⁵ <http://data.worldbank.org/>

the Canadian Act of 1984 vastly inspired the South African employment equity legislation. As such, the progress gap between the two countries is perhaps not an issue of design but rather of implementation. While both programs provide a concise amount of enforcement mechanisms for the legislation, it is likely that the Canadian environment provides stronger structures for control. It is important to note that the study was primarily focused methods of implementation and such has not provided an analysis of exogenous factors such as corruption, political instability or economic downturns.

As with every study reliant on market analysis, the availability of accurate and updated data has limited the scope of the research. Further assessments will need to be provided, notably in Canada where the latest available data dated from 2011. Country practices in terms of diversity management have also been difficult to address as methods differ from company to company. Perhaps a more useful analysis of these practices could be provided through field research, surveying and interviewing. A further concern relative to the increasing diversity among the workforce is group cooperation. In Malaysia, despite tolerant relationships, cultural differences are likely to impact business approaches notably between Malays of Muslim confessions and Buddhist Chinese.

In spite of strong reliance on State intervention in the country, Malaysian affirmative action programs have been successful in improving the overall well being of Bumiputera populations. Sadly, the implementation has amounted to a wicked problem where decreasing intra-group inequality results in increased inter-group inequality. As seen in the first part, it is not impossible to imagine a model of affirmative action based on income as opposed to racial inequalities, as it is partially the case in India where affirmative action measures are designed to exclude the better off cases among the designed group.²⁴⁶

What are the implications for future policy markers?

One common issue raised by academia in all three countries regarded the set of skills offered by the designed groups. Board of directors in Canada indicated not being able to find suitable candidates due to lack of experience and skills of the target group. Similarly, in both Malaysia and South Africa, indicators suggested a lack of qualified individuals to fulfil positions of middle and top management. Any future approach to affirmative action should be concerned with being more inclusive of practices such as training, mentoring or developing skills of employees. These practices, acting on the supply side of the labour market are relatively easy to implement and can provided minorities with the necessary tools for entrance in the market.

Practices designed to improve workforce qualifications and skills utilisation do exist in the labour market. One example is that of the Texas workforce development programme, where employers from manufacturing and technology industries can received training and career assistance. In particular, enterprises can contact the Workforce Commission with a specific enquiry. The Commission, in collaboration with educational institutions

²⁴⁶ Christopher McCrudden, C. (2011). A Comparative Taxonomy of Positive Action and Affirmative Action Policies. Queen's University Belfast Law Research Paper No. 12-04, pp.1-23.

and state agencies can then create customised skills training seminars in response to company needs²⁴⁷. Similarly, in Singapore, programs implemented in the 90s focus on upward workforce mobility by using “on the job training schemes”. The Singapore Workforce Development Agency also provides support for enterprises in implementing programs that facilitate the integration of employees over forty, either by providing funds or appointing an external consultant²⁴⁸. While these measures are designed to improve the skills of the total workforce, it is possible to align such measures with affirmative action goals. For example, in Malaysia, employers have pointed out the lack of English proficiency among Bumiputera populations. Nation wide or regional programs providing English training for Malay populations could increase the employability of this specific group. In South Africa, where Black populations are still confined to lower skills positions, external consultants can prove useful in designing specific career advancement paths for the designed group, promoting upwards mobility inside the company. Developing career advancement paths may also prove useful from a company perspective, not only by increasing legislation compliance but also by reducing recruitment costs.

Remedying to this gap in skills should fall within strategic concerns of organisations. The way forward for companies operating in diverse environments is the recognition of diversity as an advantage, as well as the improvement of managerial commitment to these practices. Once company culture has been aligned to reflect diversity objectives, companies can invest in the professional fulfilment of their workforce. Providing training and development opportunities inside the company will not only improve experience and skill among various groups but also enhance overall upward mobility for workers in the labour market.

²⁴⁷ Buchanan, J. et al. (2010), “Skills Demand and Utilisation: An International Review of Approaches to Measurement and Policy Development”, OECD Local Economic and Employment Development (LEED) Working Papers, 2010/04, OECD Publishing, Paris.

²⁴⁸ Idem

References:

- Agocs, C. and Burr, C. (1996). Employment equity, affirmative action and managing diversity: assessing the differences. *International Journal of Manpower*, 17(4/5), pp.30-45.
- Austen-Smith, D. and Wallerstein, M. (2006). Redistribution and affirmative action. *Journal of Public Economics*, 90(10-11), pp.1789-1823.
- Archibong, U. (2009). International perspectives on positive action measures. Centre for Inclusion and Diversity, University of Bradford, European Roma Rights Centre and Ludwig Boltzmann Institute of Human Rights.
- Buchanan, G Sidney, (1989). *Johnson v. Transportation Agency, Santa Clara County: a paradigm of affirmative action*. *Houston Law Review* 26 (2), 229.
- Buchanan, J. et al. (2010), “Skills Demand and Utilisation: An International Review of Approaches to Measurement and Policy Development”, OECD Local Economic and Employment Development (LEED) Working Papers, 2010/04, OECD Publishing, Paris.
- Combs, G., Nadkarni, S. and Combs, M. (2005). Implementing Affirmative Action Plans in Multinational Corporations. *Organizational Dynamics*, 34(4), pp.346-360.
- Cortes, K. (2010). Do bans on affirmative action hurt minority students? Evidence from the Texas Top 10% Plan. *Economics of Education Review*, 29(6), pp.1110-1124.
- Crosby, F. (1994). Understanding Affirmative Action. *Basic and Applied Social Psychology*, 15(1), pp.13-41.
- Cummings, T. and Worley, C. (2010). *Organizational development and change*. Toronto: Nelson Education.
- Darity Jr., W., Deshpande, A. and Weisskopf, T. (2011). Who Is Eligible? Should Affirmative Action be Group- or Class-Based?. *American Journal of Economics and Sociology*, 70(1), pp.238-268.
- Dass, P. and Parker, B. (1999). Strategies for managing human resource diversity: From resistance to learning. *Academy of Management Executive*, 13(2), pp.68-80
- Deshpande, A. and Weisskopf, T. (2014). Does Affirmative Action Reduce Productivity? A Case Study of the Indian Railways. *World Development*, 64(C), pp.169-180.
- Edwards, J. (1995). *When race counts*. London: Routledge.
- Faundez, J. (1994). *Affirmative action: International perspective*. Geneva: International Labour Organization
- Gaibie, S. (2014). Affirmative action: concepts and controversies. *HeinOnline*, pp.1-24.
- Horwitz, F. and Jain, H. (2011). An assessment of employment equity and Broad Based Black Economic Empowerment developments in South Africa. *Equality, Diversity and Inclusion: An International Journal*, 30(4),
- Klarsfeld, A., Booysen, L., Ng, E., Roper, I. and Tatli, A. (2010). *International handbook on diversity management at work*. Edward Elgar Publishing, pp.68-80; 218-240;.
- Kölle, F. (2017). Affirmative action, cooperation, and the willingness to work in teams. *Journal of Economic Psychology*, 62, pp.50-62.
- Kovacs, J., Truxillo, D., Bauer, T. and Bodner, T. (2013). Perceptions of Affirmative Action Based on Socioeconomic Status: A Comparison with Traditional Affirmative Action. *Employee Responsibilities and Rights Journal*, 26(1), pp.35-57.

- Lee, H. (2010). Racial Inequality and Affirmative Action in Malaysia and South Africa. PHD. University of Massachusetts.
- Lee, H. (2012). Affirmative Action in Malaysia: Education and Employment Outcomes since the 1990s. *Journal of Contemporary Asia*, 42(2), pp.230-254.
- Lee, H. (2014). Affirmative Action Regime Formation in Malaysia and South Africa. *Journal of Asian and African Studies*, 51(5), pp.511-527.
- Lee, H. (2015). Affirmative Action in Malaysia and South Africa: Contrasting Structures, Continuing Pursuits. *Journal of Asian and African Studies*, 50(5), pp.615-634.
- McCrudden, C. (2011). A Comparative Taxonomy of Positive Action and Affirmative Action Policies. Queen's University Belfast Law Research Paper No. 12-04, pp.1-23.
- McCrudden, C. (2015). Affirmative Action: Comparative Policies and Controversies. *International Encyclopedia of the Social & Behavioral Sciences*. Wright, J. (ed.). 2nd ed. Elsevier, Vol. 1, p. 248-255
- Moro, A. and Norman, P. (2003). Affirmative action in a competitive economy. *Journal of Public Economics*, 87(3-4), pp.567-594.
- Mustapha, A. (2011). Seeking Representativeness: Affirmative Action in Nigeria and South Africa Compared. Overcoming the Persistence of Inequality and Poverty, Palgrave Macmillan UK(Book Section), pp.251-276.
- Mustapha, A. (2011). Seeking Representativeness: Affirmative Action in Nigeria and South Africa Compared. Overcoming the Persistence of Inequality and Poverty, Palgrave Macmillan UK(Book Section), pp.251-276
- Muttarak, R., Hamill, H., Heath, A. and McCrudden, C. (2012). Does Affirmative Action Work? Evidence from the Operation of Fair Employment Legislation in Northern Ireland. *Sociology*, 47(3), pp.560-579.
- Pretorius, J. (2001). Legal evaluation of affirmative action in South Africa. *Journal for Juridical Science*, 26(3).
- Ratuva, S. (2013). The politics of preferential development: Affirmative action and trans-global study. ANU Press, Chap.1.
- Thomas, D.A. and Ely, R.J. (1996), 'Making differences matter: a new paradigm for managing diversity', *Harvard Business Review*, September–October, 79–90.
- Thomas, A. and Jain, H. (2004). Employment equity in Canada and South Africa: progress and propositions. *The International Journal of Human Resource Management*, 15(1), pp.36-55
- Strachan, G., Burgess, J. and Henderson, L. (2007). Equal employment opportunity legislation and policies: the Australian experience. *Equal Opportunities International*, 26(6), pp.525-540
, UK: Cambridge University Press
- Schmidt, P. (2004). An approach to diversity training in Canada. *Industrial and Commercial Training*, 36(4), pp.148-152.
- Swain, C. (2004). The new white nationalism in America. Cambridge Strachan, G., Burgess, J. and Sullivan, A. (2004). Affirmative action or managing diversity: what is the future of equal opportunity policies in organisations?. *Women in Management Review*, 19(4), pp.196-204.
- Tajuddin, A. (2014). Malaysia in the world economy (1824-2011). Lanham, MD: Lexington Books, Chapter 7.
- Zwart, F. (2000). The Logic of Affirmative Action: Caste, Class and Quotas in India. *Acta Sociologica*, 43(3), pp.235-249.

Legal:

Canadian Human Rights Act, 1985

Constitution of the Republic of South Africa, 10 December 1996

Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (2000)

Directive 2000/43/EC and Directive 2000/78/EC

Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000)

Directive 76/207/EEC on equal treatment in employment, vocational training and working conditions (amended in 2002).

Employment Equity Act, Republic of South Africa, 1998, amended 2014

Employment Equity Act, Canada, 1986

International Labour Organization (ILO), Discrimination (Employment and Occupation) Convention, C111, 25 June 1958, art.5

European Court of Justice, (2000) C-158/97, *Badeck v. Hessischer Ministerpräsident*

Treaty establishing the European Community (Nice consolidated version 1999) - Part One: Principles - Article 13

UN Economic and Social Council, 'Comprehensive Examination of Thematic Issues Relating to Racial Discrimination' (19 June 2000) E/CN.4/Sub.2/2000/11

Reports:

Annual Report Card. , (2015). Canadian Board Diversity Council, pp.1-36.

Advancement in Corporate Canada : A Focus on Visible Minorities Survey Findings. (2007). Ontario Ministry of Citizenship and Immigration, Catalyst and the Diversity Institute in Management and Technology, pp.1-64.

Commission for Employment Equity Annual Report 2016 - 2017. (2017). South Africa: Department of Labour Chief Directorate of Communication.

Employment Equity Annual Report. (2016). Employment and Social Development Canada

Employment Equity Annual Report 2016 - 2017. (2017). South Africa: Department of Labour Chief Directorate of Communication.

Employment and Inequality Outcomes in South Africa. (2010). Southern Africa Labour and Development Research Unit (SALDRU). School of Economics, University of Cape Town.

Labour Employment Equity Data Report. [online] Employment and Social Development Canada. Available at: <http://www12.hrsdc.gc.ca>

Labour, Employment Equity Data Report. [online] Employment and Social Development Canada. Available at: <http://www12.hrsdc.gc.ca>

Other:

Assemblée nationale, fiche de synthèse : L'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives - Rôle et pouvoirs de l'Assemblée nationale - www.assemblee-nationale.fr.

Median Monthly Gross Household Income by Ethnic Group, Strata and State, Malaysia, 1970-2014. [online] Available at: <http://www.epu.gov.my/en/content/table-3-median-monthly-gross-household-income-ethnic-group-strata-and-state-malaysia-1970>

Ministry of National Education and Research, Priority education. Available at: <http://www.education.gouv.fr/cid187/l-education-prioritaire.html>

Federal Contractors Program - Canada.ca. [online] Canada.ca. Available at: <https://www.canada.ca/en/employment-social-development/programs/employment-equity/federal-contractor-program.html>

Immigration and Ethnocultural Diversity in Canada. (2011). [online] Available at: <http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-010-x/99-010-x2011001-eng.cfm#a4> [Accessed 28 Jul. 2017].

National Post. (2017). *Have Canada's changing demographics made it time to retire the concept of visible minorities?*. [online] Available at: <http://nationalpost.com/news/canada/have-canadas-changing-demographics-made-it-time-to-retire-the-concept-of-visible-minority/wcm/703d5001-e954-4ad8-b7d6-1eeefe8f5207>

OECD.org, <http://www.oecd.org/social/income-distribution-database.htm>

Poverty data, <http://povertydata.worldbank.org/poverty/country/MYS>

Statistics Canada, <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/index-eng.cfm>

Toronto Sun. (2017). Woman denied government job because of race. [online] Available at: <http://www.torontosun.com/news/canada/2010/07/20/14772661.html>