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HELPDESK REQUEST

Global Experience of Black Economic Empowerment and Indigenisation Policies

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1 Outline of the Query and Approach

The helpdesk query focuses on the global experience in light of Zimbabwe's recent indigenisation drive. Specifically the query asked:

1. What other examples are there of countries pursuing indigenisation policies similar to Zimbabwe's (with a high % indigenisation requirement)?

2. How have they been implemented and what lessons have been learned?

3. What other examples of other forms of indigenisation/empowerment are there, and with what lessons?

An attempt was made to:

- Look at cases from a variety of countries with most relevance to the Zimbabwe context and with the most available information

- Briefly summarise key policy structures

- Draw out instances of where private sector advocacy has influenced/ shaped the policy and conversely where policy has been more prescriptive than inclusive

Given that few countries have followed an explicit indigenisation policy in recent times and the corresponding lack of an academic literature, the query response includes both academic literature and more 'grey' sources (news articles, blogs, opinion pieces etc.) The duration and intensity of indigenisation programmes have varied by country, giving rise to different levels of research and evidence being available, which is reflected in the note.

The term indigenisation or Black Economic Empowerment (BEE) is commonly understood to increase local participation in or ownership of foreign-owned or managed companies. Depending on the specific context it can incorporate a broad and multi-faceted approach encompassing education, affirmative action in the workplace, land reform, and equity ownership. The varying design and features of each indigenisation programme makes it especially difficult to compare strategies undertaken in different countries but an attempt has been made here to identify common features and factors that drive success or failure.

The primary purpose of indigenisation policies can be argued to be to avoid racially-based violence in the context of a transfer of political power to the economically disenfranchised. It therefore can become very difficult to assess in a rigorous manner, since the counterfactual may be catastrophic levels of strife which could be economically far more crippling than the efficiency costs of implementing an indigenisation policy.

In many cases, as in Zimbabwe, the definition of who is indigenous is particularly contentious and one which has been examined at length in each of the countries examined. In all cases specific definitions were arrived at that sought to create a more precise classification than simply nationality.

In the Southern African context the definition has typically focused on 'previously disadvantaged' communities or individuals. Issues around the definition of indigenisation have not been explored in great detail in this note since it falls outside the purview of this query and has been treated as a given in each country. The specific background of the Zimbabwe case is also not explored in great detail here but only introduced to provide a context; since the focus is to look at global experiences.

2 Background and Introduction to Zimbabwe

Economic indigenisation has been pursued by most African governments during the post-colonial era. While indigenisation policies have met with varying degrees of success, they are hampered by what have generally become 'highly politicised' processes of African business class development 'highly dependent on political support and sponsorship' (Craig, 2002)

Over the last decade, the ruling party of Zimbabwe, ZANU-PF, has introduced and implemented extensive redistribution and indigenisation policies. These began with land redistribution from 2002, and then moved on to economic sectors like mining, manufacturing and banking following the passage of the 'Indigenisation and Economic Empowerment Act of 2007' (IEE). These moves to control foreign involvement in an earlier open economy has led to considerable capital flight and investor caution in increasing future exposure to the Zimbabwean economy.

The decade between 1980-1990 following independence saw growth averaging 4.5% with land reform largely taking place using a 'willing buyer willing seller' model as agreed under the Lancaster House agreement. Economic growth began to slide in the 1990s with increased political interference and mismanagement. As the economic crisis deepened in the late 1990s, the scope for providing compensation reduced and indigenisation strategies became more assertive and extractive. The last decade has seen the Zimbabwean economy shrink significantly with growth rates being almost consistently negative, and inflation rates estimated to be as high as 79.6 billion percent per month in mid-November 2008. Official statistics suggest that the level of formal employment in the economy halved over the decade, from 1.5 million to 0.75 million. The price of the mismanaged economy and an ineptly implemented indigenisation policy has been borne largely by the rural poor, with poverty increasing significantly; to the point that about one-third of under 5 year-olds are stunted.

Indigenisation can be seen as a pragmatic approach to dealing with the injustices of the past, starting to resolve contradictions in a system whereby there was a fundamental mismatch between the democratic rights enjoyed by the majority, and yet a lack of economic opportunities. In Zimbabwe, policy makers found that it was unsustainable, in the context of universal suffrage from 1980, to maintain the highly-racialised economy inherited from the colonial and UDI era. A degree of indigenousiation was necessary to bridge the divide. In reality, there is evidence that indigenisation has been used as a political tool by ZANU-PF to reward its' allies. The widespread economic mismanagement of the preceding decades can be seen to have been caused by a number of factors. Amongst them however, the strong measures taken on indigenisation are at least an important contributing factor.

It has been argued that the redistribution and indigenisation drive by the ZANU-PF is primarily a political device to strengthen its nationalist credentials in the face of opposition (Kondo and Moyo 2012). Zimbabwe adds a further insight into how indigenisation can degenerate into authoritarian rule and persecution. In Zimbabwe these developments have unfolded along the lines of what Scarnecchia (2006) describes as a fascist cycle.

Andreasson (2010) points out that given the legacies of division and conflict, indigenisation in South Africa and Zimbabwe are likely to be highly controversial and intensely politicised. As with any process of transformation based partly on a complex and problematic process of ethnic or racial categorisation of peoples, indigenisation has the potential to: a) treat peoples in an unjust manner; b) give rise to corruption and patronage among elites most likely to benefit; and c) exacerbate societal divisions, thereby jeopardising development and democratic consolidation. But indigenisation is also lauded for constituting a pragmatic approach to dealing with injustices of the past and inequalities of the present and for its role in helping formerly oppressed peoples transcend their colonial dispossession.

Zimbabwean businessmen say some form of indigenisation was likely to have taken place no matter which party won the election in 2013. The crucial concern, however, is how it will be implemented and what compensation companies could expect, particularly if they were to be forced to transfer shares to state entities at a time when the government is cash-strapped.[1] With regards to the implementation of the indigenisation policies, uncertainty seems to be a defining feature. There is evidence that individual investors have had widely different experiences depending on officials encountered and relationships developed.[2]

The severe downturn in agricultural production following the redistribution policies may have played a role in attempting a more pragmatic and piece meal approach in the case of other businesses. However there have been different messages from different players in the political sphere, including most clearly in the uncertainty surrounding how the 51% rule will be implemented in the banking sector. The '51% rule' which is at the core of the IEE act, requires that indigenous Zimbabweans must own a controlling interest or a 51% shareholding or interest in any business. The already fragile financial sector would be severely affected by the implementation of the 51% rule.

Due to the highly political nature of the process of implementation there has also been significant lack of clarity on specific clauses of the act. Some specific issues that have arisen include:

- Statutory Instrument 66 of 2013, which was published on the 17th May 2013, requires indigenisation only to the extent that indigenous Zimbabweans must own a controlling interest or a 51% shareholding

- It does not apply in relation to any such business that commenced operating before the 1st March 2010, which is the fixed date set by section 20 of Statutory Instrument 21 of 2010.

- Whether it requires indigenous Zimbabweans to own 100% of a business

Since the passing and notification of the IEE Act, there have been a number of notifications and instruments laying out how the policy will be implemented. These include the 2010, 2011 and 2013 statutory regulations.[3] Currently there are still limited cases of businesses being made to comply, and an air of uncertainty as to how the implementation will proceed. This is not explored in detail in this note, which focuses on the international experience of such policies.

[1] The Financial Times (2013) http://www.ft.com/cms/s/0/2146fd00-042f-11e3-8aab-00144feab7de.html#ixzz2uNAdO6BX
[2] Oxford Analytica (2013) 'Zimbabwe's indigenisation legacy dampens investor mood' December 18.
[3] http://www.nieeb.co.zw/

3 International Experience of similar programmes

Creating an alternative ownership structure in an economy with entrenched interests and inequitable distribution is notoriously difficult. While redistribution or empowerment may be considered important from an equity perspective to correct for historical imbalances, they may lead to short term economic fluctuations that can be catastrophic.

The global experience of such programmes remains limited, and success seems rare. This section looks to understand the specific methods used in various countries, as well as their ability to drive change through policies of affirmative action in the private sector. The literature on the subject is limited with the cases of Malaysia and South Africa probably receiving the majority of the analysis. This section looks purely at policies that encourage economic participation on grounds of racial identity or nationality. There are numerous other economic policies like nationalisation, reservations or procurement rules which are explored further in the next section.

3.1 Malaysia

Background

Malaysia is probably the best known and most studied example of a concerted affirmative action policy undertaken in the private sector of an economy. Following the racial riots of May 1969, the Malaysian government implemented an ambitious 20-year plan to achieve national unity. This plan, the New Economic policy (NEP) sought to attain national unity by achieving inter-ethnic economic parity between the predominantly Malay Bumiputera ('sons of the soil') and the predominantly Chinese non-Bumiputera. The government hoped to increase Bumiputera corporate equity ownership to 30% by 1990, with the emergence of a full-fledged Malay entrepreneurial community within one generation (Siddique and Suryadinata 1981). The NEP was constructed around two ‘prongs’: first, the eradication of poverty, regardless of race; second, the restructuring of Malaysian society in order to ‘reduce and eventually eliminate the identification of race with economic function.

With the end of the NEP, the National Development Policy (NDP), building on the objectives of its predecessor, was implemented between 1991 and 2000, with similar policies continuing to this day. NEP implementation entailed partial abandonment of the laissez faire style of economic management in favour of greater state intervention, to support the accelerated expansion of the Malay middle class, capital accumulation on behalf of the Malays and the creation of Malay capitalists.

The NEP also introduced a quota system for Malays in education, employment, and government contracts, along with the measures to restructure the ownership of corporate equity holdings. In addition a key element of the NEP was massive spending not only on agriculture and rural infrastructure, but also on education and social services in rural regions.

Features

The measures used to achieve these goals included requiring companies to restructure their corporate holdings to ensure at least 30% Bumiputera ownership and by allotting publicly-listed shares at par value or with only nominal premiums to Bumiputeras. In 1970, according to the Malaysian government, about three-quarters of the corporate sector of agriculture and mining, almost 60 per cent of corporate manufacturing and commerce, and about half of banking and insurance were owned by foreigners.

Some of the defining features of the NEP in addition to the 30% target in equity ownership were:

- Firms were required to establish plans for employing, training and promoting Bumiputera at all levels of operations. Such plans were prerequisites for government contracts and licences. Bumiputera employment quotas varied according to the size of a firm. Larger firms were required to achieve a 40% quota;

- 20% of all loans made by commercial banks were to be made to Bumiputera;

- Bumiputera were given price preferences for all government tenders ranging from 2-10% and additionally, 30% of the contracts were reserved for Bumiputera;

- Preference was to be given to Bumiputera in the issue of new licences or permits pertaining to logging, saw milling, timber exports, vehicle import, mining, banking, finance, insurance, transport, and tin and rubber dealing;

- A preferential share allocation scheme was introduced whereby all companies listing on the KLSE must offer at least 30% of their shares to Bumiputera. This is often achieved by having two floats – a 30% tranche is available only to Bumiputera applicants, and then 70% tranche is made available to all share applicants including Bumiputera. The first tranche often sells below the listing price or even the offer price, meaning that those Bumiputera investors who might acquire shares in the first offer are able to later ‘stag’ or sell their shares on the open market and realise potentially sizeable capital gains;

- Requiring firms to put aside at least 30% of their equity for Bumiputera interests, requiring non- Bumiputera firms to employ and train Malaysian citizens to reflect the multiracial composition of the country’s population in all grades of appointment up to managerial level; and requiring firms to adopt real measures over a reasonable time to use Bumiputera distributors to the maximum extent possible, the minimum being 30% of turnover;

- In a further effort to expedite Bumiputeras ownership and control of the economy, the government formed public corporations known as Bumiputeras trust agencies, to buy corporate shares in select companies on behalf of Bumiputeras. For example, Pernas Trading was awarded control of the Malaysia-China trade. Malaysian Chinese traders were then required to pay a commission to Pernas if they wanted to trade with China. This caused much resentment in Malaysia’s Chinese community and was ultimately abandoned;

- Ethnically based quotas were introduced for local universities

Till 2009 all companies seeking a public listing on the Bursa Malaysia (formerly Kuala Lumpur Stock Exchange) were required to reserve at least 30% of its initial public offering (IPO) for purchase by Bumiputera. Bumiputera equity remains a consideration when companies apply for an array of required permits and licenses, many of which must be renewed either annually or biennially. Government procurement (and that by most state owned enterprises) continues to be subject to Bumiputera preferences.

Foreign owned larger retailers ("hypermarkets") and locally incorporated direct selling companies must still have 30% Bumiputera equity. The guidelines also include requirements that department stores, supermarkets, and hypermarkets must reserve at least 30 % of shelf space in their premises for goods and products manufactured by Bumiputera-owned small and medium size industries.[4]

The sphere of asset restructuring is where the capacity of strategically-placed Malays to capture the benefits of redistribution is most clearly evident. A particularly innovative mechanism of asset redistribution has been a mutual fund programme entitled *Amanah Saham Nasional* (ASN) or National Unit Trust Scheme which was set up to purchase at cost the assets *of Permodalan Nasional Berhad* (PMB), the National Equity Corporation and sell them to the wider Malay community. PMB in turn is one of the key state enterprises involved in massive corporate takeovers by the Malaysian state in the 1970s; it also acquired at par at least 30% of the equity of companies floated on the stock exchange. As studies have observed, ASN is 'a brilliant strategy that simultaneously kept the State in control of the companies, spread the profits to the wider Malay community, and kept the shares in Malay hands, since an individual could only buy and sell through ASN. Ownership of shares however remained skewed. By 1985, 43% of eligible Malays had invested a total of M$1.9 billion in ASN shares (US$1=M$2.4 in 1985). However, 85% of those invested $500 or less, while about 13% of eligible Malays owned 75% of ASN shares.

Interestingly many of the restrictive quota rules were implemented to a greater degree for domestic non Bumiputera firms, than for foreign firms. The Industrial Coordination Act (ICA) of 1975 stipulated that all industries with share capital greater than M$ 100,000 or more than 25 employees would have to obtain a licence, and were subject to NEP quota requirements. The ICA evoked an outcry from foreign and non-Malay business interests, as well as a decline in foreign and domestic private investment. In 1977 the government introduced a set of amendments that exempted foreign companies producing for export from many of the provisions of the ICA. The Associated Chinese Chambers of Commerce and Industry of Malaysia also put up a stiff opposition to the move but were only able to derive minor concessions.

Lessons Learnt

The NEP has been a success to some extent. For one thing, there have been no more race riots in Malaysia, unlike neighbouring Indonesia, which witnessed anti-Chinese pogroms as recently as 1998. Malaysia has prospered since its adoption unlike countries with more heavy-handed redistributive policies, with per capita incomes having increased from $339 to $10,400 over the past 40 years. The Malay professional class has grown rapidly from a negligible base: the number of Bumiputera employed in the professional category, especially those qualified as medical doctors, engineers and

[4] U.S. Department of State Investment Climate Statement
http://www.state.gov/e/eb/rls/othr/ics/2013/204686.htm

lawyers had approached the percentages of the racial composition. The Bumiputera poverty rate had gone down from 64.8% in the 1970s to 2.2% in 2012. The Bumiputera corporate company equity rate had also gone up from only 2.4% in the 1970s to 23.5% in 2011.

Singam (2003) points out that while there was widespread resentment at the time of implementation, many non-Bumiputera Malaysians - especially the ethnic Chinese Malaysians- are supportive of the Bumiputera Policy and this policy has generated remarkable success in achieving a more stable distribution of economic power in Malaysia.

Rasiah and Sharia (2001) point out that through preferential policies, the state was able to increase Bumiputera employment in the public sector and stimulate increased participation in the manufacturing sector, thereby succeeding in their efforts to restructure the occupational identification of identity. Bowie (1998) comments in the context of Malaysia that in a fragmented society, short term policies favoring wealth redistribution will take precedence over policies promoting long run economic growth.

Perkins and Woo (2000) point out that the dual advent of the petroleum boom and increased foreign investments in free trade zones helped the government change the structure of the economy significantly in the period following the implementation of the NEP. By the early 1980s Malaysia was well into the process of restructuring the race ownership of the modern sector of the economy. This suggests that while indigenisation policies are not necessarily a deterrent to economic growth; their effectiveness is greatly aided by a conducive economic environment and where certain sectors (in this case much of the foreign investment led manufacturing) are effectively exempt from such policies.

The mutual fund programme entitled *Amanah Saham Nasional* (ASN) or National Unit Trust Scheme has been seen as one of the more effective mechanisms that were created to help widen equity ownership amongst Malays. The ASN was set up to purchase at cost the assets *of Permodalan Nasional Berhad* (PMB), the National Equity Corporation and sell them to the wider Malay community. PMB in turn was one of the key state enterprises involved in corporate takeovers by the Malaysian state in the 1970s; it also acquired at par at least 30% of the equity of companies floated on the stock exchange. As studies have observed, ASN simultaneously kept the State in control of the companies, spread the profits to the wider Malay community, and kept the shares in Malay hands, since an individual could only buy and sell through ASN. However ownership of shares remained skewed. By 1985, 43% of eligible Malays had invested a total of M$1.9 billion in ASN shares (US$1=M$2.4 in 1985). However, 85% of those invested $500 or less, while about 13% of eligible Malays owned 75% of ASN shares.

In the context of corporate company equity ownership, the government claims to not have achieved the target of 30% ownership.[5] On the other hand several studies have concluded that the 30% equity target has been reached or exceeded[6]; but the topic has proven to be extremely sensitive politically and official government figures place Bumiputera equity at 23%. The government's methodology has been criticised as not fully transparent, and there has been considerable debate over how to

[5] Text of PM's speech at launch of Bumipetera economic empowerment programme. http://www.thestar.com.my/News/Nation/2013/09/14/full-text-najib-bumi-speech.aspx/
[6] US Department of State (2013) Malaysia Investment Climate Statement

account for the value of state-owned enterprises and other government-linked companies or how to measure equity (par value versus market value).

Critics like 'The Economist' point out that these policies have now become an entrenched part of the Malaysian economic system, with many still in place today over 40 years later. While there have been changes in the policies over the decades, a system of affirmative action remains in place, with nearly $10 billion of benefits going to the Bumiputera annually even today.[7] The Economist has called the Bumiputera the world's most notorious system of positive discrimination, which has delivered only limited success.[8] While numerous efforts have been made to roll back or realign affirmative action policies, they continue to be key electoral issues and remain in some form or the other even today. Billed in 1971 as a temporary measure, the NEP has become central to a system of patronage.[9]

A system of affirmative action creates perverse incentives as well as a special class of elites who are in a position to benefit most from the opportunities provided. As Gomez (2003) states 'among the largest enterprises, prominent Malays with a background in politics or the civil service were appointed as company directors, mainly to serve as avenues to secure access to the state or bypass bureaucratic red-tape in government.' Hart (1994) points out that the NEP therefore gave rise to a class of *rentier* capitalists who use their preferential access to subsidies, licences, contracts, and so forth to operate in close alliance with wealthy Chinese through so-called Ali-Baba arrangements. Studies of the composition of corporate boards of directors show that a few Malays, often of aristocratic background or of high rank in the political/administrative structure, often have seats on many boards.

Although the NEP was hailed in some quarters as having reduced the socioeconomic disparity between the Chinese and Malay majorities, while others accused it of having reduced the status of non-Malays to second-class citizens by cementing 'Malay supremacy'.

According to many analysts, Malaysia's complex network of preferences to promote the acquisition of economic assets by the ethnic Malay majority and other indigenous groups (collectively known as "Bumiputera") represents a key impediment to the country's ability to reach its goal of achieving high-income status by 2020. Many of the preference policies are opaque, with details of implementation largely left to the various ministries and civil servants within those ministries. Policies and practices vary greatly. Some practices are explicit and contained in law or regulation while others are informal, leaving much ambiguity for potential investors. The civil service itself is overwhelmingly ethnic-Malay in composition. The NEM proposes reforming ethnic preferences in business ownership and social safety net programs, moving to an income based approach rather than one that is ethnicity based. Some conservative Bumiputera groups have voiced strong opposition to any significant changes to the extensive preferences.

[7] The Economist (2013) Bumi, not booming. http://www.economist.com/news/asia/21586864-ruling-party-returns-its-old-habits-race-based-handouts-bumi-not-booming
[8] The Economist (2005) Failing to spread the wealth. http://www.economist.com/node/4323219
[9] The Economist (2013) http://www.economist.com/news/briefing/21576654-elections-may-could-mark-turning-point-never-ending-policy

It is also important to remember that the NEP was initially implemented in a relatively conducive environment, coinciding with the OPEC oil price rise and a boom in the prices of rubber and tin, commodities which Malaysia is an important producer of. Since Malaysia is a commodity exporter, the surge in government revenues played a decisive role in enabling what was essentially redistribution from incremental income rather than a reallocation of existing resources and property rights. This is a critical political economy point because in a stagnant economy, indigenisation is essentially a zero sum game with losers and gainers. This tends to also lead to greater use of assertive policies and rent seeking activities However in an economy, like Malaysia's, which was able to sustain rapid economic growth it is much easier to undertake interventions that impact the relative shares of increasing national income.

3.2 South Africa

Background

With the end of apartheid in 1994, one of the priorities of the ANC government was to correct the skewed nature of the economy, and improve the welfare of black South Africans. To do this it has promoted the transfer of stakes in white-owned businesses to a new class of black investors under a Black Economic Empowerment (BEE) programme.

Interestingly Ponte et al (2007) have shown that despite the assumed novelty of BEE, the policies of the post-apartheid South African state have historical precedents nationally and internationally. In South Africa, the assistance given under apartheid to poor whites in the inter-war years, and to Afrikaner capital in particular, successfully transformed a group of largely uneducated and poor Afrikaners into commercial farmers and an urban business and political elite. This furnished the ANC government with a home-grown model of state manipulation of the economy to benefit a particular social group. Indeed, the ANC itself had espoused a similar strategy of black '*volkskapitalisme'* from at least the mid-1950s. An alternative set of reference points could have been found in the experiences of other African countries with policies and programmes to promote 'local' or 'indigenous' ownership and economic advancement. But the attraction of examples such as Kenya and Nigeria to the new ANC-led government in 1994 was substantially diminished by the poor economic performance of African countries in general since 1980.

The first BEE transaction was in 1993, before the country's first multiracial elections. Metropolitan Life, an insurer, sold a 10% stake to Methold, a holding company owned by well-connected blacks. In 1998, the year that the BEE business really accelerated, there were 111 transactions worth a total of 21 billion rand (then worth $3.8 billion).[10]

Features and Legal structure

In 2003 a Broad Based BEE Act (B-BBEE) was introduced. This act makes codes of good practise binding on all state bodies and public companies. The government is required to apply them when making economic decisions on:

[10] The Economist (2013) Fool's Gold http://www.economist.com/news/briefing/21576655-black-economic-empowerment-has-not-worked-well-nor-will-it-end-soon-fools-gold

- procurement,
- licensing and concessions,
- public-private partnerships, and
- the sale of state-owned assets or businesses.

Private companies must apply the codes if they want to do business with any government enterprise or organ of state – that is, to tender for business, apply for licences and concessions, enter into public-private partnerships, or buy state-owned assets.[11] B-BBEE requirements are specified in the Codes of Good Practice, which were published in the Government Gazette in 2007. The codes, first implemented in 2011, created a Black Economic Empowerment (BEE) "Scorecard" to rate a firm's commitment to economic transformation using seven different dimensions—ownership, management, skills development, employment equity, preferential procurement, enterprise development, and socio-economic development. Each dimension is weighted, with ownership receiving the most empowerment points and socio-economic development the least.

All in all, there are at least 24 laws as well as policy and regulatory provisions dealing with empowerment. They cover more than ten sectors, nine gambling boards, ten government tender boards, tender boards of state enterprises, a marine council, broadcast and telecommunication authorities, small business promotion bodies, a privatisation fund and labour relations institutions. Some of these provisions include: the Employment Equity Act (1998), which requires employers to implement affirmative action in favor of Previously-Disadvantaged Individuals (PDIs) to ensure equitable representation at the workplace; the Preferential Procurement Policy Framework Act of 2000, which provides a framework to encourage procurement from empowered entities; and the Skills Development Act (1998), which provides an institutional framework for improving the skills of the South African workforce (Sanchez 2006)

Foreign investment is in part excused from BEE rules. Equity equivalence deals provide multinational corporations options for scoring on the ownership dimension without the transfer of equity stakes, which could run against the company's bylaws. Such a deal would likely involve creation of a black-owned South African joint venture valued at least 25 percent of the multinational's South African operations. However, the process for approving an equity equivalent mechanism by the DTI is complicated and requires a significant effort on the part of the multinational.

In addition to B-BBEE transformation framework, sectors such as financial services, mining, and petroleum have their own "transformation charters" intended to accelerate empowerment within the sector. In 2011, the integrated transport, forest products, construction, tourism, and chartered accountancy sectors had force of law in South Africa. In 2012, the Information and Communication Technology (ICT) Charter and Property Sector and Financial Services Charters gained force of law. Other sectors, including Agri-business and Marketing, have transformation charters that are more "aspirational" in nature.

[11] South Africa Department of Trade and Industry http://www.dti.gov.za/

In October 2012, the government submitted for public comment proposed revisions to the law underpinning its B-BBEE policy. The revisions emphasise local procurement and introduce measures to combat the practice of “fronting,” by which companies manipulate or misrepresent their black empowerment levels to win contracts. The government reasoned an increased focus on enterprise and skill development over simple equity ownership would produce more meaningful transformation of the South African economy. The revisions also introduced penalties for companies failing to perform sufficiently across all key dimensions, including ownership, which would make certification more difficult for multinationals. The government has argued a more rigorous scoring regime was necessary to ensure only those firms most committed to economic transformation gain the benefits of B-BBEE certification. The public comment period ended December 5, and after further review the government may forward draft amendments to the National Assembly sometime in 2013.

The Employment Equity Act of 1998 prohibits employment discrimination and requires large- and medium-sized companies to prepare affirmative action plans to ensure that black South Africans, women, and disabled persons are adequately represented in the workforce.

Land reform has been partial so far in South Africa and is not discussed in detail here. Less than 7 percent of land has been redistributed to date. Most of the land that has been transferred lies unused because of a lack of capital and skills on the part of the new owners. Commentators like Lahiff[12] have argued that much needs to be done by the State, as allowed in the South Africa constitution, to drive a more radical land reform agenda. Interestingly he sees Zimbabwe in the 1980s as a positive example, where the government engaged robustly in the land market, and acquired reasonably good quality farms, restructured them to facilitate small-scale family farming and provided high levels of support to new farmers. This was quite different from policies pursued post 2000 when a full-blown economic crisis intersected with a crisis of political legitimacy that propelled the Zimbabwean government to engage in extreme forms of land seizure.

Lessons Learnt

Although a portion of the previously-disadvantaged population has advanced in the economy since 1994 and a black capitalist class has become increasingly visible, black South Africans remain poorer and with more limited employment opportunities than whites as seen in contrasting unemployment rates. Inequalities still characterize both South African society and economy. The transfer of wealth has been narrow and the Gini coefficient has increased from 0.56 in 1995 to 0.64 in 2005. Therefore, despite the government’s commitment to transformation and apparent will to empower the majority of disadvantaged individuals and communities, broad empowerment is yet to be seen. (Sanchez 2006) While in Zimbabwe the rhetoric of indigenisation soon became coupled with targeting of the country’s whites and other minorities, black empowerment in South Africa has also produced an increasingly divisive and at times overtly racialised rhetoric.

Given the context of South Africa and the anti-apartheid struggle, issues of empowerment are closely aligned with the issue of asset ownership rather than just education or even employment. This has probably restricted the impact BEE policies have had. South Africa also hasn’t grown as

[12] http://www.pbs.org/pov/promisedland/land_reform.php

significantly as Malaysia was able to, so empowerment has meant transferring economic benefits from one group to another within the context of a slow growing economy.

BEE has seen contradictory arguments being made by different groups. On the one hand there is the argument that it is restrictive and doesn't allow the expansion of the economy, leading to detrimental effects for all, including blacks. On the other hand proponents argue that BEE is not doing enough to push for the empowerment of blacks, with this only providing an impression of change.

Many argue that the binding constraint on greater black participation in the economy is education. The proportion of professionals who are black is 36%, fairly close to the share of degrees held by blacks, which is around 40%. But that falls short of the 75% share of the total workforce who are black.

The Economist (2013) finds that the unemployment rate among blacks is 28.5%, compared with 5.6% for whites. If those who want work but have given up looking for it are included, the jobless rate is 41.6% for blacks compared with 7.5% for whites. A costly bureaucracy has grown up to enforce racial targets, which even black-owned firms have to contend with. Posts are left vacant for want of qualified black staff. Some businesses re-employ white professionals as freelance consultants to plug skills shortages without falling foul of the law. The U.S. Department of State analysis of the Investment Climate states that 'South Africa's Broad-Based Black Economic Empowerment (B-BBEE) program has a significant effect on foreign investment.'

Freund (2007) on the other hand points out that while creating an elite may involve enriching a small number of black ANC supporters, it is probably a necessity given the propensities of what remains of the established 'embedded elites' of the past. It is questionable however, whether this new elite has the sense of direction in pursuit of an industrialising economic model or a broad social model to carry through envisioned changes. While under the direction of the ANC the South African social structure is shifting in important ways and different sectors of the black population clearly benefit, the majority are not actively involved in a process of transformation that would offer the possibility of radical improvements.

According to former President Kgalema Motlanthe (2004), the then General Secretary of the ANC, BEE oftentimes entailed 'transfer rather than transformation' and has accordingly failed to create 'new markets [and] new drivers of domestic demand in the economy'.

Kruger (2011) finds that an empirical survey, conducted in March/April of 2010 among the top local South African businesses ranging from small, medium to large multinational companies, the perceptions, thoughts and anticipations of 500 individual managers on the impact of BEE on ten selected dimensions of business performance were sought. Alarmingly, most of the respondents disagreed with the notion that BEE compliance would improve the performance of the companies they worked for, specifically with regard to overall and international competitiveness; service excellence and client satisfaction; quality; productivity; entrepreneurial spirit and innovation; production performance; human development; staff morale, business ethics and transparency; sales and access to markets; and financial performance. These sentiments were expressed despite the fact that the majority (70%) of respondents indicated that they as individuals could stand to benefit if the companies they were employed in became BEE-compliant.

Andrews (2008) provides a useful summary of some of the criticisms of the BEE programme, as well as a theoretical framework to explore how the design of the BEE can be improved to make it a catalyst for growth. He argues that the BEE picture is rosier than many critics suggest; there has been an increase in the number of deals, breadth of beneficiaries, and variety of activities firms are undertaking. Looking at the fundamental question of whether the BEE is a South African growth catalyst or not, he finds that it essentially it could be but isn't at the moment. He states that while firms are actively responding to BEE requirements they are also doing so within a fairly static macro-structural context. Ownership, control and management initiatives reflect a minimal change approach whereby firms are adding PDI partners at the margin, with the PDIs looking very much like old white owners, directors and managers. This limits the number of beneficiaries of BEE.

To make BEE more effective and to catalyse growth Andrews (2008) argues that firms should be allowed to set their own targets and not be subject to rigid quotas, and targets should be measured by credible entities—possibly industry based; BEE should focus less at the top of the economy where there are skills constraints and defensive elites limiting the effect of the BEE interventions—it should rather focus at the middle and bottom of the economy, getting big firms to reach down and invest in training and jobs; finally, BEE should be subject to a sunset clause that states seriously when the policy will be considered successful enough to end (for the policy as a whole and for firms subject to the policy).

Ponte and Sittert (2007) looking at the use of BEE in the fisheries sector find that despite its redistributive intentions, it has been doubly conducive to the interests of large-scale South African capital. To begin with, it has by and large confirmed the historical share of fishing rights to incumbent, largely white-controlled, operators. Second, it has created a layer of 'black captains of industry' to whom incumbents are increasingly outsourcing primary production in a volatile, high-risk and currently loss-leading sector.

As Southall (2007) points out the problem for the overwhelming majority of aspirant black businesspersons in the early 1990s was that they were 'capitalists without capital'. Segregation and apartheid had deliberately inhibited black capitalism. Two broad conclusions follow. First, if aspirant capitalists were to prosper then they needed to acquire rapid access to capital. Consequently, whilst many of the empowerment deals were immensely convoluted, they revolved around the basic tenet that the only way to get significant capital into black hands was through loans or gifts. Second, if blacks were to position themselves as likely recipients of loan or gift capital, then they had to establish a track record within the corporate or public sectors, or demonstrate valuable political connections and a capacity for business. Black empowerment financing was thus overwhelmingly provided by large banks and finance houses, or state finance institutions (both routes increasingly supplemented indirectly by government procurement policies favouring recognised empowerment companies or joint ventures).

Schneiderman (2009) looks at some of the additional impacts of the B-BEE policies followed by the ANC government, in the form of its fallout on bilateral investment treaties with the U.S. He finds that indigenisation policies 'rub up against rules for the protection and promotion of foreign investment touted by leading Organisation for Economic Co-operation and Development (OECD) states and embraced by the US in its model investment treaty, and providing one of the factors for the collapse of trade talks between the two countries.'

Interestingly Hart (1994) looks explicitly as to whether Malaysia provides a model for post-apartheid South Africa to follow. He states that while the "NEP does demonstrate that a highly interventionist state can redefine the conditions of access to resources and opportunities along racial/ethnic lines - a lesson that also emerges from South African experience in the post-1948 period; late 20th century South Africa confronts a very different configuration of social forces than earlier in its history or in Malaysia". Hart argues that in the Malaysian case, the interventions entailed the creation of an capitalist class engaged in rentier forms of accumulation, consequent heavy reliance on foreign investment, tight controls on labour, and a rural elite that lays claim to massive subsidies. This would not therefore confront the fundamental issues facing the South African economy, but only replace the current structure for a similarly imbalanced one.

The private sector has by and large taken a conciliatory role, with few businesses making a public stand against BEE. After the end of apartheid in South Africa, white mining bosses were at the forefront of drafting the country's black-economic-empowerment laws. These require mining firms to sell stakes of at least 26% to black shareholders by 2014.[13] Iheduru (2008) states that while black businesses have supported BEE, white businesses have predictably taken a more cautious approach. It has not been considered politically expedient for any businesses, especially domestic ones, to come out very strongly against the fundamental idea underlying BEE, which is that both private and public sectors have a responsibility ensuring that previously disadvantaged South Africans are integrated at all levels of the economy and that such integration is in the long-term interest of all parties involved. In fact, business opposition to what is a fairly radical and highly interventionist government programme of (race based) redistribution has been surprisingly muted.

The key issue in the case of South Africa has been the failure to grow its economy significantly. Many skilled people have been voting with their feet, choosing to emigrate and there has been a failure of FDI and domestic investment to grow the economy. This, along with government failure to educate the workforce has meant an inability to drive a redistribution policy coupled with economic growth.

3.3 Namibia

Background

Based on data in the mid-1990s, Namibia had a Gini coefficient of 0.701, not only an extremely unequal distribution of income, but the highest such coefficient for all countries for which it had been reliably calculated: the wealthiest fifth of the population controls 78.7% of income share, while the poorest fifth has to live on a mere 1.4%.

Black empowerment

[13] The Economist (2012) Wish you were mine. http://www.economist.com/node/21547285

The government actively encourages partnerships with historically disadvantaged Namibians. Although the Government does not have a codified Black Economic Empowerment (BEE) programme, the Ministry of Labor and Social Welfare's Equity Commission requires all firms to develop an affirmative action plan for management positions and to report annually on its implementation. In November 2011, the Prime Minister tabled the "New Equitable Economic Empowerment Framework" which aims to create conditions in which the distribution of income becomes far more equitable than it is at present. After some debate, the draft policy was withdrawn for possible revision and has not been re-introduced to Parliament. Namibia's Affirmative Action Act strives to create equal employment opportunities, improve conditions for the historically disadvantaged, and eliminate discrimination. The commission facilitates training programs, provides technical and other assistance, and offers expert advice, information, and guidance on implementing affirmative action in the work place.

The strategic policy thrust of the NEEEF will be centered around five key pillars: (a) ownership, (b) management, control and employment equity (c) human resource and skill development, (d) entrepreneurship development and (e) community investment.[14]

In certain industries the government has employed techniques to increase Namibian participation. In the fishing sector, companies pay lower quota fees if they operate Namibian-flagged vessels that are based in Namibia, with crews that are predominantly Namibian. The Minister of Mining and Energy has made clear that mining companies must "indicate and show commitment to empower previously disadvantaged Namibians" in their applications for exploration and mining licenses.

While the Foreign Investment Act stipulates that foreign investors should be treated the same as Namibian investors, the Act acknowledges that the government has the right to impose restrictions. Most restrictions have to do with land and natural resource rights and government contracts (tenders). For example, the government requires local participation before issuing licenses to exploit natural resources and has implemented additional restrictions in the case of certain "strategic minerals".

In 2011, the Namibian government declared uranium, diamonds, gold, copper, and rare earth metals to be strategic minerals. The declaration aims to make the Namibian Government and the people of Namibia meaningful participants in the mining sector by granting state-owned companies the right to own all new licenses issued for the exploration and mining of strategic minerals. Such companies are authorized to enter into joint ventures with other parties for exploration and/or development.

The Land Reform Act regulates the acquisition of agricultural land by foreign nationals. No foreign national is allowed to acquire agricultural land without the prior consent of the Minister of Lands.

Lessons Learnt

Melber (2007) states that public procurement and other outsourcing activities by those in control of state agencies turn 'affirmative action' and 'black economic empowerment' into a self-rewarding scheme based on 'struggle credibility and credits' among the activists of the erstwhile liberation

[14] New Equitable Economic Empowerment Framework (NEEEF)

movement. Through such practices, the skewed class character of Namibia's society has hardly changed since independence. Cooption into the ruling segments of an existing socioeconomic system is very different from social transformation. Both AA and BEE in their current form continue to cultivate human and natural exploitation for the benefit of a few at the expense of far too many. As the veteran opposition politician Hitjevi (Gerson) Veii, former president of the first Namibian liberation movement SWANU and political prisoner on Robben Island, categorically stated during a fund-raising event for his party: While the intention of Affirmative Action and Black Economic Empowerment was to reduce the imbalances created by apartheid colonialism, these concepts are being hijacked by ruling elites to destroy our much anticipated class struggle.

3.4 Middle East (United Arab Emirates)

This section looks briefly at a different context; namely the Middle East, and specifically the UAE, and its approach to local ownership in economic activities. Most Middle Eastern legal regimes, in an attempt to protect their national entrepreneurs, have implemented local ownership restrictions which either:

- do not allow any foreign ownership of companies operating in particular industries (e.g. oil and gas, construction or recruitment) or ownership of real estate outside designated areas); or

- limit the percentage of shares in other local companies that are available for foreign ownership (e.g. 51% local ownership restriction in the UAE, Kuwait and Qatar; 30% in Oman). These limitations may not apply in economic free zones.

The Federal Companies Law applies to all commercial companies established in the UAE and to branch offices of foreign companies operating in the UAE. Companies established in the UAE are required to have a minimum of 51 percent UAE national ownership. Regardless, profits may be apportioned differently and often are negotiated at fixed amounts. Branch offices of foreign companies are required to have a national agent unless the foreign company has established its office pursuant to an agreement with the federal or an emirate government. All general partnership interest must be owned by UAE nationals. To comply with the local ownership restrictions, a foreign investor is often required to have a local sponsor for the target company and, in case of a branch office, appoint a local registered agent.

In order to mitigate some of the practical hardships of the local ownership restriction and to ensure a foreign investor can, in practice, exercise a satisfactory level of control over the target company, foreign investors often enter into nominee arrangements with the target company's local partners and shareholders, so the investor acquires an economic ownership of shares in the target company above the allowed registered shareholding threshold (in addition to the legally permitted registered title to target company's shares).

The World Bank has identified that the country's statutory requirement for a UAE national partner acts as an impediment to higher levels of investment.[15] Government tendering is also not conducted

[15] http://www.internationallawoffice.com/newsletters/detail.aspx?g=ac282bd3-0ed6-4df9-a761-1a6ce7d001de

according to open and transparent standards, with re-tendering common. To bid on federal projects, a supplier or contractor must be either a UAE national or a company in which UAE nationals own at least 51 percent of the capital or have a local agent or distributor.

It is important to note that unlike the cases discussed above, the UAE and other regimes required local participation in all new firms operating in their economies. This was not being imposed in a scenario where there was already an established economic regime with large-scale foreign ownership; making its implementation relatively simpler.

4 Other forms of indigenisation/empowerment

4.1 Special measures of protection (Small Scale Industries)

In addition to special preferences or quotas being provided on the basis of race, policy makers in other contexts have also looked to support specific industries or groups of firms on the grounds of protection for future growth, or that they provide important development benefits. Policy steps have included licensing, import substitution, reservations, quotas and local procurement and content rules. A large and well established literature exists on these policies and their varying impacts in specific contexts globally. This section looks at the specific example of small scale industries in India which received significant protection.

Background

After independence in 1947, Indian planners and policy-makers felt that protection was essential to the development of a strong, indigenous economy. The Indian state played an integral role in the industrial and economic development of the country resulting in a dominant public sector and heavily regulated private sector. Public policy, immediately post-independence, ensured this through the reservation of certain industries for the public sector and also controlling and regulating the private sector, so as to channel investment into desired areas. India also followed a policy of 'import substitution.' This was followed by putting strong emphasis on indigenous production, and discouraging imports through import licensing, stiff quantitative restrictions and high tariff rates. Thus the first four decades after independence saw the development of a highly protected economy.

Policy Features

Owing to the feeling that the small scale sector was an important tool in employment generation, value creation and poverty alleviation, small-scale units were given further protection. Small scale units were given the reservation of over 800 products' exclusive production in the small-scale sector, reservation of some of the products produced in the sector for purchase preference by government agencies, supply of scarce materials, input price concessions like lower interest rates and numerous fiscal measures such as excise duty exemptions and other tax concessions.

Large firms were barred from making products such as pencils, boot polish, candles, shoes, garments, and toys -- all the products that helped East Asia create millions of jobs. The objective of this policy was to improve the competitive strength of the small scale sector, and protection was seen as a transitional step.

Impact and change in policy

In 1997, more than 40 years after the adoption of this policy, the Abid Hussain committee, an expert group was set up to look into the matter of small scale sector policy. They made a strong case for the abolition of these reservations and went to the extent of saying, "Reservation of products for the small-scale sector must be totally abolished. It has been so ineffective that even a phased abolition will serve no purpose." The primary problem with this policy is that instead of being an instrument of transitional protection, it has become an end in itself.

Starting in 2001, items have begun to be de-reserved from the list of products that can only be manufactured by small scale industries, with support increasingly provided in the form of fiscal and tax incentives and access to credit. Additional support is provided by the Government through the preferential purchase by the Central and State Purchase and price preference of up to 15 percent in case of selected products.

Small-scale industries enjoy certain inherent strengths such as lower over-head costs, flexibility in production, informality in labour relations, exploitation of local resources and skills, capacity to execute small orders and to offer customized services. The small scale sector is often able to offer the niche services which the larger manufacturers are unable to. For example, countries such as China, Bangladesh, Malaysia, Philippines, Sri Lanka have no reservation for the garment industry and yet the small-scale units, are thriving. The large units specialize in executing large orders of institutional garments while the small units take on smaller orders of high fashion, seasonal garments. Collaborative relations between the large, medium and small units through subcontracting arrangements are well established. This can be used in the Indian context as well. The government's policies should seek to strengthen and promote such collaborative efforts rather than keep them apart through protectionism.

4.2 Nationalisation and Local Content Rules

Both nationalisation and local content rules tend to be highly context specific and are not explored in detail in this note, but are included as examples of other policy measures to support local economic growth and drive national interests.

Nationalisation refers to the process of taking a private industry or private assets into public ownership by a national government or state. Industries that are usually subject to nationalisation include transport, communications, energy, banking and natural resources. Nationalised industries, charged with operating in the public interest, may be under strong political and social pressures to give much more attention to externalities. Nationalisation has been carried out in nearly every country in the world at some point or the other, to varying degrees of success.

Similarly local content rules have been used by countries as a protection mechanism or a way to incentivise and support development of a local economy. This may be applied through Government tenders that require that interested bidders are at least partially locally owner or a proportion of the value of the product must be created locally. Local content rules may also apply to purely private sector activities, especially in the natural resource sector.

5 Conclusion

There remain key gaps in the literature, and given the unique nature of each indigenisation programme and the context within which it is applied, it is difficult to draw out clear conclusions on lessons learnt or the key elements of success.

It seems clear that such processes are open to political interference and success seems rare. Indigenisation and empowerment policies have often been accompanied with dirigisme policies, rather than being led by the private sector. At the same time it is important to recognise the importance of indigenisation to a politically sustainable post-colonial settlement. Indigenisation policies therefore should look to be implemented in a manner that is beneficial to the groups it seeks to help and as far as possible minimise any possible negative economic consequences. Some of the key elements of a successful empowerment policy from a reading of the literature are listed below.

1. Transparent and rule based
2. Gradual and incremental
3. Focused on a broad set of issues including education, employment, worker rights etc and not only equity ownership. This means that the scope of empowerment is defined to include education and employment as well as asset ownership. The loss of half of the formal sector jobs in Zimbabwe, without a corresponding compensation from the ownership of almost all commercial farm land is a case in point. Owning land is important but it amounts to little if the access to input supplies and output markets is inadequate
4. Guided by clear implementation plans with capacity to manage the process
5. Developed closely with the private sector, and avoids the use of arbitrary targets and rules but be context and sector specific. The how of BEE being implemented is, in many cases, as important as the rationale for the policy itself.
6. Sequencing is critical, and it is important to first get growth and then look at the distribution of its benefits - without having to be coercive and authoritarian. Achieving any meaningful indigenisation in the context of a fragile economy is incredibly difficult, again as evidenced in recent times in Zimbabwe. Indigenisation cannot be and should not be, seen as a response to economic collapse because in most cases it will only exacerbate the problem
7. Set up with sunset clauses to ensure that policies do not remain in perpetuity and that there is a clear idea of what success looks like.

There remain limited examples of the private sector engaging proactively and productively with such processes. In Malaysia, Malay-Chinese interests were largely side lined, with possibly greater involvement and engagement with foreign business interests. Similarly in South Africa, the political nature of the process has meant that businesses have by and large taken a conciliatory role, with few businesses making a public stand against the B-BBEE initiatives. It could however be argued that the empowerment policies implemented are far more amenable to business interests than outright nationalisation which could have been an alternative option. Therefore business engagement with the process has actually benefited them by preventing a more interventionist policy.

It is clear from the country cases discussed that it cannot be conclusively said that BEE/indigenisation policies are compatible or incompatible with economic growth. In the case of Malaysia it was undertaken in a context of very rapid, broad based economic growth and development. Conversely, in Zimbabwe, with negative growth rates, the options for BEE become far more limited, and often oppressive. The lack of economic growth means there is a tendency to acquire equity without compensation; the incentive for private business to remain in the country is limited, and the political economy issues become more sharply defined since it becomes a zero sum game with some groups losing and others gaining. It should be acknowledged that BEE policies can have a range of different distributional outcomes and this is closely aligned with the political imperatives driving the process. That ZANU-PF and the ANC have strongly contrasting outcomes from their indigenisation programmes is not surprising, given their contrasting political programmes.

In conclusion, it should be noted that indigenisation is a long term process. Over four decades after the NEP was introduced in Malaysia and despite numerous other successes in its empowerment programme, it has still been unable to reach its more modest target of 30 percent of equity ownership.

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