

"The Chinaman was under the tip of the shoe"

Equity and South African Chinese

Chinese South Africans suffered economic and social humiliation under apartheid and yet are excluded from any redress. **Yoon Jung Park** explains how, despite controversy, the Chinese community are taking their case to court.

Joseph, 56, is a born South African medical doctor living in Kimberley. As a Chinese South African he was subjected to a quota system which limited the number of Chinese admitted to the University of the Witwatersrand Medical School. Because he lived in the Cape Province, he had to get a special permit from the Chinese Consul-General attesting to his good standing within the community in order to travel between the Cape and the Transvaal.

At Medical School, he and the handful of other black, coloured, and Indian students were asked to leave the room when it came time to 'practise' their surgical skills because 'non-whites' were not permitted to be present while post-mortems were conducted on white bodies. They were free to examine the organs in theatre only after the body had been removed.

Joseph, even with his top qualifications, was not able to get a job in a white hospital because he was defined as 'non-white'. He was prohibited from practising medicine on white patients. Even if he was allowed to practice in a white hospital, he would have been paid on a lower scale. So, he opened up a small private practise in one of the black locations outside of Kimberley, where he continues to practise today.

While discrimination during medical training and later practice was offensive, he experienced the highest levels of humiliation outside the workplace. Chinese South Africans were the first 'non-whites' to move into white suburbs. However, in order to take 'advantage' of these privileges, Chinese were required to go door-to-door to get signatures from their white neighbours permitting the 'Chinaman' to live there. What Joseph hated most was that his white neighbours were mostly less-educated civil servant-types. All other concessions to Chinese South Africans during the 1960s and 1970s were either permit-based or discretionary; they could be taken away at the slightest objection from any white person.

ARE CHINESE BLACK?

With this background, should Chinese South Africans be included as 'black persons' for the purposes of employment equity and Black Economic Empowerment (BEE) legislation? This question was first raised when the Employment Equity Act (EEA) was introduced in 1998 and it continues to elicit strong reactions from all parties and remains highly controversial.

During apartheid Chinese were classified differently under different pieces of legislation. Under the

Electoral Act, Chinese were classified as 'black'. They were the only ethnic community in South Africa to have been denied the vote until 1994. Blacks could vote in homelands, coloureds and Indians were co-opted by the Tricameral Parliament, but Chinese, as a group, never had the vote. According to the Department of Community Development however, Chinese were classified as 'Asian'. The Group Areas Act included Chinese in the general category of 'coloured' and Proclamation 73 of 1951 placed the Chinese in a separate population group. For the purposes of the Mixed Marriages and Immorality Acts, the Chinese were always viewed as 'non-white' and could be prosecuted for crossing the colour line.

While the laws were relatively clear, albeit inconsistent, about the position of Chinese as 'non-white', general South African society, particularly white South Africans, was more confused. Studies conducted by the Human Sciences Research Council (HSRC) in the late 1970s attested to the growing social acceptance of Chinese amongst whites. Certainly by the 1980s, large numbers of Chinese had moved into white areas, were sending their children to private white schools, and attending universities in large numbers (proportionate to their community). While most of these were still permit-based privileges



Publicity on the invidious position of the Chinese reached fever pitch in 1970. After in which ridicule was directed at government policy, the Chinese were permitted to sporting level with Whites.

and concessions - always dependent on the white bureaucrat - neighbours and restaurant-owners turned a blind eye.

The Chinese South African community remains emotionally divided about whether or not it should be included in affirmative action policies. There is also a generation of young Chinese South Africans who never experienced apartheid-era deprivations.

Nelson, 42, for example, felt that because the Chinese were relatively advantaged and because they did not openly fight for their rights during apartheid they should not reap the benefits of affirmative action. "It's a difficult one. If you're going to be honest with yourself... there's disadvantage, but... the Chinese had some advantages... In the long run, were they disadvantaged? I think it's very relative... In my personal experience, *the Chinaman was under the tip of the shoe, under gentle pressure, whereas blacks and others were under the heel... I was a bit under the tip.*"

James, 42, on the other hand, explained that while he did not personally suffer from deprivations, he was incensed on behalf of his

elders and the larger community about their exclusion from EEA and BEE. While he acknowledged that the Chinese had some advantages, he stated that legally they were no better off than blacks under the 'old regime'. He contended that this government must acknowledge the discrimination, the suffering, and the hurt of the Chinese, especially those of earlier generations.

"A lot of my relatives had corner shops... and they find themselves discriminated against now, or their children find themselves discriminated against... they were treated by government exactly the same as black people in terms of owning property, owning businesses in white areas and for all intensive purposes, they were 'black'... To put it on the record that the Chinese were discriminated against under the old regime... To prevent future discrimination... To say my father and his father were discriminated against. No question about it. It may have been a different level to black people or coloured people, but it was discrimination. If you do not recognise that, you do not recognise the suffering, the hurt, the preclusion of opportunity for my parent's generation... Chinese were excluded

from the vote. We weren't allowed to go to the movies, buy property. There's a whole list of things."

LEGAL AND AFFIRMATIVE ACTION

After much discussion within and amongst regional Chinese associations over a period of years, the Chinese Association of South Africa (CASA) made a presentation and submission to parliament, explaining their legal status during apartheid and protesting their exclusion in May 2003. To date, the community has not had any official word from parliament about their case. Given this inaction by either the Department of Labour or the Department of Trade and Industry, CASA has recently obtained legal representation, including from the well-known human rights advocate, George Bizos, and has opened a High Court case.

Arguments against the inclusion of Chinese South Africans from affirmative action policies often raise issues of their relative economic advantage and their lack of struggle credentials. In the face of the legal facts, these issues have little merit. However, for the sake of argument, I will address them.

With regard to their relative

economic advantage, there were black, coloured, and Indian business people who took advantage of gaps in apartheid laws or bypassed these altogether to make their fortunes during apartheid. And in the early post-apartheid period, current black captains of industry made millions from the first generation of black empowerment deals. Should these individuals continue to benefit from affirmative action policies? Can they legitimately be considered economically disadvantaged?

On the second issue of their virtual invisibility during the struggle, I quote former President Nelson Mandela. In a statement to a gathering of Chinese business people in 1998 he said of the Chinese: "It is a community which has shared the indignities heaped on all those in South Africa who were not categorised as 'white', a community which, because of its small size and its own insistence on human dignity, helped expose the twisted logic of apartheid; and which made its contribution to passive resistance, to defiance, and to opposing group areas and segregated political structures... Today, in a democratic South Africa, we can at last draw on all these rich threads as we build a nation in which every community, however small, can flourish while its members are full and unqualified members of the broader South African nation."

The Chinese, in the early days of the 20th century, participated, side-by-side with Indians, to protest pass laws for 'Asiatics' and, in particular, fingerprint requirements. Much later, during apartheid, in protest against the Group Areas Act, the Chinese consistently refused to conform. Through mostly diplomatic channels, they fought to be excluded from these laws which threatened their livelihoods.

While most of their apartheid-era battles were fought independently

of the masses, a few did join in. During the struggle, a handful of Chinese, some Communist, engaged in covert activities. During my interviews with over 70 Chinese South Africans, several people mentioned one family in particular, the Changfoots, who helped to hide and transport arms for Umkhonto we Sizwe. There was also mention of several others. These few individuals hid their activities for obvious reasons. Fear played a tremendous role in preventing Chinese from greater involvement in the struggle. Their high visibility together with family, community, and cultural pressures ensured that Chinese remained inconspicuous. Many Chinese emigrated rather than continue to live under apartheid. Others, in quiet ways, protested.

As they became more socially accepted by white South Africans, the apartheid government was less able to justify its racial policies. In the late 1970s and well into the 1980s, it was the Chinese question, more than any other, which led the architects of apartheid to question their 'twisted logic'. In their attempts to address the contradictions of Chinese legal exclusion and social inclusion, the white government offered, on several occasions, to put Chinese on the white voter roll. It also offered the Chinese a position on the controversial President's Council. To its credit, in each of these instances, the Chinese community declined these 'offers'. In the Catholic Chinese newsletter, *Inter Nos*, Father Ignatius Ou stated:

"As Christians, it should certainly not be our objective to seek to be elevated merely to lord over any less fortunate groups than ourselves, but rather to seek to achieve equal status whilst at the same time retaining our identities as Chinese and always fostering our rich Chinese culture of which we should

be justifiably proud... our aim should not be to protect an ideal of separate development and discrimination but to strive for the fundamental equality of all South African citizens."

One might argue that while the Chinese did not actively participate in the struggle in large numbers, in their very in-betweenness, stuck between white and black, they struck significant blows against the apartheid structures. As the *Daily News* on 30 June 1970, stated: "It seems paradoxical that one of South Africa's smallest ethnic minorities - the Chinese community of 8 000 - is dealing some of the heaviest blows to the crumbling wall of applied apartheid. Soul-searching in Nationalist intellectual circles has, possibly, been more evident over the Chinese questions than with any other problem of racial segregation."

For Chinese South Africans their continued exclusion from affirmative action is not only symbolic of their continued inequality and lack of belonging in the new South Africa, but it also denies their history of discrimination in apartheid South Africa. That the discrimination they suffered may have been less harsh than the discrimination suffered by black South Africans makes it no less real.

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