Affirmative action for women in higher education and the civil service: The case of Ethiopia
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Affirmative Action for Women in Higher Education and the Civil Service: The Case of Ethiopia

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prof. dr. B.J. Schueler

Faculteit der Rechtsgeleerdheid
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## Acronyms

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<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AAU</td>
<td>Addis Ababa University</td>
</tr>
<tr>
<td>AFWA</td>
<td>Armed Forces Wives Association</td>
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<tr>
<td>CGAD</td>
<td>Center for Gender and Development</td>
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<tr>
<td>COPWE</td>
<td>Commission for Organizing the Party of the Working People of Ethiopia</td>
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<tr>
<td>CSA</td>
<td>Central Statistics Authority</td>
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<tr>
<td>ECOVAS</td>
<td>Economic Community of West African States</td>
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<tr>
<td>ECSC</td>
<td>Ethiopian Civil Service College</td>
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<tr>
<td>ECSU</td>
<td>Ethiopian Civil Service University</td>
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<tr>
<td>ENA</td>
<td>Ethiopian News Agency</td>
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<tr>
<td>ESLCE</td>
<td>Ethiopian School Leaving Certificate Examination</td>
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<td>ESDPRP</td>
<td>Ethiopian Sustainable Development and Poverty Reduction Program</td>
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<tr>
<td>EWVSA</td>
<td>Ethiopian Women’s Volunteer Service Association</td>
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<td>EWWA</td>
<td>Ethiopian Women Welfare Association</td>
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<tr>
<td>EYWCA</td>
<td>Ethiopian Young Women’s Christian Association</td>
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<tr>
<td>FCSC</td>
<td>Federal Civil Service Commission</td>
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<td>FCSP</td>
<td>Federal Civil Servants Proclamation</td>
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<tr>
<td>FDRE</td>
<td>Federal Democratic Republic of Ethiopia</td>
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<tr>
<td>GPA</td>
<td>Grade Point Average</td>
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<td>HLIs</td>
<td>Higher Learning Institutions</td>
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<tr>
<td>IGAD</td>
<td>Inter-governmental Authority on Development</td>
</tr>
<tr>
<td>IPMDS</td>
<td>Institute of Public Management and Development Studies</td>
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<tr>
<td>MOFA</td>
<td>Ministry of Foreign Affairs</td>
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<tr>
<td>MOE</td>
<td>Ministry of Education</td>
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<tr>
<td>NCTPE</td>
<td>National Committee on Traditional Practices of Ethiopia</td>
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<tr>
<td>OBCs</td>
<td>Other Backward Classes</td>
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<tr>
<td>PDRE</td>
<td>Peoples’ Democratic Republic of Ethiopia</td>
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<tr>
<td>REWA</td>
<td>Revolutionary Ethiopian Women’s Association</td>
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<tr>
<td>SCs</td>
<td>Schedule Castes</td>
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<tr>
<td>STs</td>
<td>Schedule Tribes</td>
</tr>
<tr>
<td>WAO</td>
<td>Women’s Affairs Office</td>
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<tr>
<td>WPE</td>
<td>Workers Party of Ethiopia</td>
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Chapter 1

Introduction

1.1 Background

Although women are believed to constitute half of the world’s population, they are, however, invariably deprived of access to and equal share of resources and opportunities. The causes for such inequalities are deeply-rooted in religions, cultures, legal systems, political institutions and social attitudes in different societies. Despite the fact that most legal barriers have been removed and non-discriminatory laws have become applicable worldwide since the mid-20th century, women still remain far-off from reaching equality to men. In fact, they continue to be among the most disadvantaged in all realms of life due to the legacies of the past.

Similarly, women in Ethiopia faced a variety of legal, economic and social constraints. They are victims of harmful traditional practices and domestic violence; they were deprived of access to education, training, employment and political participation reinforced by stereotypical attitudes. Burdened with domestic labor, they are debarred opportunities from taking part in the labor force, and therefore underrepresented in public and professional life, often confined to clerical occupations at best, and to low-paying semi-skilled jobs like garment manufacturing and food processing.

Being disadvantaged in education and subjected to cultural taboos and restrictions, women’s participation in the public sphere remains minimal and consequently could not become equal beneficiaries from the growing economy. It should also be pointed out that women in Ethiopia bear the greater burden of poverty as the result of, among other things, gender-based division of labor, which is not only prescribed by tradition and culture but also reiterated by laws. Even the Ethiopian civil code of 1960 affirmed the woman’s inferior position in various provisions debarring them from exercising their right to equality in matrimonial relations and confer the male partner as the sole head of
the family and in charge of family property, and hence the utmost decision maker in every aspect of family life (Ethiopian Civil Code, 1960: Articles 635, 641, 644 and 646). Although some positive steps have been adopted by the government to improve the position of women in recent years, they still lag behind in the areas of higher education and the civil service. Redressing such historical imbalances has, therefore, become imperative to the wellbeing of the society in general and women in particular by way of bringing about equal access, to resources, satisfactory social equity and gender equality. It becomes apparent that for the successful advancement of women, enabling conditions, practices and opportunities must be provided. In order to bring more women into the public sphere, it is deemed essential that the structural problems pertaining to gender need to be addressed at all levels. Analysis of this lopsided and highly structured gender relation was conducted, therefore, with a purpose of altering the phenomena to the betterment of women’s position. One of the strategies that must be adopted to expedite the bridging process is believed to be ‘affirmative action’. This constitutes the rationale to assess the nature and role of affirmative action policies and programs in effectively bringing about gender equality.

1.2 Motivation

Affirmative action policies as means of rectifying age old discriminatory practices have been controversial issues worldwide. Such controversies have existed in countries like the USA and India in which affirmative action is believed to have a long history and in South Africa where the concept of affirmative action was introduced recently. As far as Ethiopia is concerned, diverse viewpoints exist as to the relevance of affirmative action for women. Some vehemently argue that affirmative action is necessary as a means of achieving gender equality while others contend that affirmative action should be abolished to enable women to compete at an equal footing with men. Such on-going debates are conducted in various gender forums and workshops organized in Ethiopia.

What has transpired from all the discourses and debates, and in view of the persistence of patriarchal attitudes and deep-rooted stereotypes, it can be hypothesized that it would be a long time before women in Ethiopia can have the opportunity to compete equally in
higher education and the civil service. Hence, in order to compensate for the past disadvantages and to enable women to compete equally in the foreseeable future, proponents believe that gender must be taken seriously in higher education and the civil service, and further propose that preferential treatment need to be provided so that women definitely achieve equality with men. On the opposite spectrum, opponents maintain that a special treatment for women is a breach of the right to equal protection guaranteed under the Ethiopian Constitution. Against this backdrop it would, therefore, be ideal to evaluate affirmative action programs, their implementation procedures and attitudes of officials at higher education and the civil service, women and other personnel towards this notion.

Although authorities of various Ethiopian higher learning and employing institutions claim that they have amended admissions and recruitment policies in order to pertain them to the new laws and policies, yet women’s representation lags behind compared to that of men. The overwhelming majority of employees in top positions and university students in traditionally-male dominated disciplines and areas of specializations still remain men. Women are still underrepresented in higher positions and overrepresented in low-paid jobs. For over a decade now, higher education and the civil service have failed to design, implement and monitor affirmative action programs for women effectively. It is, therefore, clear that the readiness of institutions for changing the position of women remained minimal and that of reluctance.

The persistence of gender imbalances has, therefore, necessitated a critical review of the so called affirmative action policies. The lack of clearly formulated policies and institutional clarity has given rise to wide ranging interpretations. This study, therefore, does critically examine the policies and practices anchored in the existing framework of affirmative action. It should also be pointed out that the research under review is, by no means, designed nor is it intended to serve one’s interest and subjective biases. Of course, in the context of the research on gender issues, which is the overarching theme of the study, the considerations which the researcher has chosen, can be clearly stated to incorporate notions of gender equality, social justice with a clear intent of doing away with any form of imbalance and inequality related to gender.
1.3 **Aim and Scope**

It follows that the main thrust of this study is to assess the changing position of women in Ethiopia vis-a-vis the reforms under the consecutive regimes with special regard to the nature and features of their participation in higher education and the civil service. This study specifically aims at comprehending the underlying features of the imbalances in gender relations. In light of this, it will explore the relevance of affirmative action policies to narrowing the gap and to ultimately bringing about a profound change in the position of women in Ethiopia. In doing so, the study investigates the extent to which affirmative action is implemented in selected sectors of the public domain. In light of the above, the research is intended to undertake the following activities:

- Review the literature on affirmative action in general and more specifically to selected countries with a view to utilizing their experiences in order to be able to give recommendations that would contribute to the effective implementation of affirmative action programs at higher education and the civil service in Ethiopia.

- Asses the status of women from a historical vantage point of gender relations in Ethiopia.

- Survey the present affirmative action programs in various sectors of the government institutions. Besides, the extent to which the programs are recognized and enforced will be considered.

- Analyze the attitudes of non-beneficiaries and beneficiaries and perceptions of affirmative action and assess the knowledge and understanding of the principles of affirmative action by all relevant parties.

- Examine the laws on affirmative action in Ethiopia and evaluate their implementations.

- Identify the challenges facing affirmative action implementations in higher education and the civil service.
- Find how best to implement affirmative action programs in institutions of higher education and the civil service in order to address past discrimination against women and promote gender equality.

The present research is confined to the period of the consecutive Ethiopian regimes starting from 1930 up to the present. This time frame was selected for a number of reasons. In the first place, it was during these consecutive regimes that modern Ethiopia had to undergo a series of fundamental political, social, economic, legal-constitutional and structural changes in which reforms were enacted affecting the position of women. It was during this time frame that women were consciously exposed to various activities and practices including education and social services. From this point of view, this period can be marked as an important historical phase of women’s variable inclusion in the transformation processes regardless of the continuing inequality and imbalance in the gender relations that have persisted unabated. This study specifically focuses on affirmative action programs targeted to women with a view to change their position in higher education and the civil service. The examination of the implementation of affirmative action is limited to that of regular students of higher education and employees in the civil service. This is because the scope of the research is limited only to the public segment of society.

1.4 Statement of the problem

Despite changes in the laws and policies over the past decades to help overcome the age-old patriarchal practices against women, the traditional views still remain as deeply ingrained in society. Needless to say, this has resulted in the continuing subordinate position of women in the Ethiopian society. In light of this, the position of women in Ethiopia was one of the most serious issues that has been debated among politicians and scholars alike, and subjected to scrutiny of changes over the past decades. Although some sporadic and spontaneous steps were occasionally taken to improve the position of women during the consecutive regimes in the past (Imperial Era (1930-1974) and the Military regime (1974-1991)), it could be safely said that fully-fledged policy reforms toward gender equality were officially enacted and took an
institutional shape in the current federal system of government which has been in place since 1991. Since then, the government has clearly demonstrated its commitment to redress the age-old discriminations against women. This commitment towards gender equality has been shown in a variety of ways, including the adoption of the 1993 Women’s Policy, the 1995 Federal Democratic Republic of Ethiopian Constitution, the 2000 Revised Family Code and the 2005 Criminal Code, the 2003 Civil Servants Proclamation, the establishment of the Women’s Affairs Office at the Prime Minister’s Office and Departments in various ministries and the introduction of affirmative action measures. To that end it can be said that Ethiopia has embarked upon legislative changes to remove the impediments to gender equality.

Despite such encouraging developments, progress has been, nevertheless, disappointingly slow in translating policy commitments into effective targets, plans and programs for implementation, both in terms of increasing the representation of women in the civil service and higher education and enabling them to succeed in their jobs and in education after admission. This study also focuses on evaluating the legislation and results of affirmative action and attitudes and perceptions of beneficiaries and non-beneficiaries of the program.

In order to guide this research, a two-fold statement is formulated:

- Whether or not the concept and principle of affirmative action is anchored on a solid grounding in order to be able to respond to the enacted legislation and implementation strategies in the Ethiopian socio-cultural and economic circumstances.

- Whether or not the necessary institutional and regulatory mechanisms are in place to effectively implement affirmative action programs for women in particular in the sectors under review.

### 1.5 Research questions
The implementation of affirmative action for women in Ethiopia is analyzed in this research taking account of its strengths and weaknesses. In view of this, the study addresses the following questions:

1. What kind of affirmative action programs are commonly implemented in higher education?

2. How do affirmative action programs work in the civil service?

3. What are the rationale and the results of implementing affirmative action in higher education and the civil service in Ethiopia?

4. What strategic actions can be adopted to effectively implement affirmative action programs and increase women’s representation in higher education and the civil service?

5. What gaps and limitations do exist in the federal and state legislation on higher education and the civil service for ensuring effective implementation of affirmative action programs and why?

6. Which capacity gaps do exist in the executive institutions and what ramifications do they entail with respect to the execution of affirmative action programs?

7. What lessons of best practices could be drawn from other countries’ experience?

1.6 Research design

In conducting this research, the researcher has reviewed applicable laws and regulations pertaining to the provision of affirmative action in Ethiopia with special emphasis on higher education and the civil service. In doing so, this study has carried out a thorough examination of a range of national legal and policy documents and related literature on affirmative action for women in Ethiopia and beyond. In addition, key personnel drawn from various institutions were interviewed that include women parliamentarians, civil servants, representatives in women’s organizations, academics and officials from various ministries at both the federal and regional levels (See Annex 1).
The specific instruments employed in data gathering include observation, interviews, questionnaires and literature review. Personal observations in the communities, stimulated by respondents and their activities were carried out by the researcher. Interview methods consist of open-ended as well as informal discussions on topics relevant to the application of affirmative action. Content analysis encompasses review of literature, legal texts, program reports etc. In addition, secondary data is collected through extensive review of published and unpublished documents. These include reports, minutes of meetings and PhD dissertations. Further, the researcher has carried out desk research on the legal systems and on the established mechanisms. An in-depth analysis of the theories and laws relevant to affirmative action both in and outside Ethiopia has been carried out by the researcher.

At the international level, relevant information was gathered from different libraries including the University of Amsterdam, the Royal Tropical Institute in Amsterdam, Institute of Social Studies library in The Hague, the library of the University of Fribourg in Switzerland, the library of the University of Oslo in Norway and the Library of Congress in the United States. Finally, internet sources have been utilized. At the national level, a review of literature was collected from libraries and archives in the Addis Ababa University, in the Ethiopian Civil Service University, Mekelle University (Tigray) and Semara University (Afar). Specialized collections such as the Ethiopian Women’s lawyers Association and resource centers including the Ministry of Foreign Affairs, the Ministry of the Civil Service, the Ministry of Education were visited in the course of the preparation of this dissertation.

The researcher has also carried out field research in both Tigray and Afar regional States. These regional States are believed to represent different socio-cultural and religious norms; while Tigray is a predominately Christian community; Islam is a predominant religion in Afar. Overall, the Tigray regional State could relatively be in a better position in terms of women’s participation in the public sector while the position of women in Afar regional State, having low level of overall socio-economic development records, is worse in terms of their participation in higher education and the civil service. However, in both regional States, what is commonly shared relates to the existence of cultural and religious influence exerted by the society could demonstrate women’s low participation in the public sector.
Data collection

The data were collected on a four-part questionnaire. Part one requires background information of the respondents: Gender, Age, Academic qualifications and Occupation. Part two deals with questions related to the understanding and relevance of affirmative action. The third part consists of questions related to the effectiveness of affirmative action in terms of implementation in the institutions. Questions related to constraints and challenges facing affirmative action at the respective institutions constitute the fourth part. Data were collected from both closed and open-ended questionnaires (See Annex 3).

The sampling method was adopted by taking account of women as beneficiaries of affirmative action programs. All stake holders were represented in the sample, including parliamentarians, employees, lecturers, students, members of women’s groups as well as Heads of women’s departments. Students constitute one group in this analysis and were selected from different years of study; namely senior and junior students. Students in this sample were mainly from Universities, Colleges and Training Institutes. The instructors at the said institutions constitute another group for analysis. Parliamentarians and civil servants comprise another group.

The questionnaires were distributed to instructors, students, employees and parliamentarians. An open-ended interview schedule was designed to investigate both men’s and women’s views and opinions on affirmative action. Interviews were conducted with officials, who were Heads of Regional Bureaus, Gender Departments and gender experts. All data were carefully scrutinized.

It should also be underlined that the field research has involved three visits by the researcher to the Afar region and two field trips to the Tigray regional states to be able to obtain a firsthand impression and observation regarding changes in women’s position in the regions. The first visit to the Afar region was in February 2007 followed by the
second visit to the western parts of the same region on March 2007. The third trip took place from 25 October 2007 to 25 November 2007. The field research to Mekelle of the Tigray region took place in April 2006 and in May 2008. Since then, successive interviews and informant discussions in Addis Ababa, Semara and Mekelle, and e-mail, telephone, personal communications, interviewing individuals, government officials at different levels, NGOs, gender experts, academics and other stakeholders in Ethiopia were conducted.

1.7 Significance of the research

Affirmative action is a highly debated issue around the world. Proponents of affirmative action argue that it is essential to remedy women’s age old discriminations while its opponents contend that employing affirmative action could cause reverse discrimination. Consequently, there is a vast scholarly literature on affirmative action worldwide. However, due to the absence of a detailed research in the area, under review in Ethiopia and the controversial issues revolving around it, there is little understanding and awareness of affirmative action. As a result, women often encounter difficulties in the course of the implementation of affirmative action programs effectively.

This study can therefore provide the basis and can serve as reference point and provide institutions with a framework within which to formulate detailed affirmative action policies in future. Thus, this research could have both an academic contribution and practical utilities to advance affirmative action policies, implementation strategies and monitoring systems. This study can also contribute to the existing study on gender relations in Ethiopia.

1.8 Limitations

To date, there is a lack of adequate data as to the extent to which the implementation of affirmative action has changed the position of women in Ethiopia. To the knowledge of the researcher, no comprehensive empirical research has been conducted on the effects of affirmative action for women in higher education and the civil service which make it
difficult to cross-check information on recorded data. At the regional states level, a poorly organized documentation and archival systems, unavailability and inaccessibility of information constitute the major challenges for conducting this study. Although relatively better organized, federal institutions lack complete documentation of information and data. Due to the apparent dichotomy between the urban and rural settings, the free flow of information was limited to the extent that no resource centers were established in the rural areas. Therefore, undertaking this research mainly had to rely on available rather scanty data in the main institutions based in the capitals.

1.9 Structure

The structure of the study involves review and interpretations of the relevant principles and concepts within the Ethiopian context. In addition, it deals with how the concepts are incorporated in the relevant policy documents. The study also examines the enforcement of national laws and international conventions as reflected in affirmative action programs in Ethiopia. Two sectors, namely higher education and the civil service are selected to assess the policy impact. This research is, therefore, focused on the evaluation of affirmative action as stipulated in the Constitution parallel with the principle of equality.

Accordingly, the study is organized into seven main chapters. Chapter one provides a brief introduction on sources and research methodology. The theoretical and conceptual framework of affirmative action is dealt with in the second chapter. Further, this chapter explains the ‘pros and cons’ of affirmative action and the distinctive features of the principles of both formal and substantive equality. The third chapter deals with the practice of affirmative action in three case studies, namely, the United States of America, India and South Africa. Chapter four discusses the historical development of women’s position in Ethiopia and the impediments that hinder women’s participation in the education and employment spheres. The legal texts both under international and national laws are critically analyzed in chapter five. Chapter six evaluates the results of affirmative action in various institutions of both the federal and regional governments. This chapter also assesses the attitudes and perceptions of beneficiaries and non-beneficiaries of affirmative action programs and further investigates the prevailing
factors that could impede its implementation. This study winds up with chapter seven with some concluding remarks and recommendations.

Chapter 2


It is widely acknowledged that women are marginalized in all aspects of life leading to enormous disparity and discrimination in the socio-economic and political spheres of life. Such a continued discrimination has necessitated corrective measures in order to combat the resulting inequalities. To promote gender equality and the development of women, states have paid continuous attention to the formulation of laws, policies and regulations and implement positive measures regarding women’s rights. However, since its inception, the principle of affirmative action has achieved both recognition but also rejection worldwide. Supporters mainly invoke the need for affirmative action in order to reverse the negative effects caused by ages of discrimination and to create an equal opportunity for all including the disadvantaged in societies. Opponents, conversely claim that individuals should be chosen based on merit and no group should be favored over another based on any grounds or status.

This chapter reviews the relevant literature on the subject of affirmative action and intends to establish the relevant theoretical underpinning for affirmative action. The chapter is divided into four sections. Section one provides definitions to affirmative action. The meaning, nature and scope of affirmative action are dealt with in the second section. The third section describes the theories of affirmative action and summarizes the broad range of arguments for and against affirmative action. What makes the debates on affirmative action unique is that both opponents and proponents of the program of affirmative action have sought to justify their respective positions by reference to their adherence to the ideal of equality. The principle of equality and affirmative action is discussed in the fourth section. It overviews the significance and meanings of the notion of equality and discusses the different approaches to equality, namely, formal equality,
substantive equality and equality of opportunity with particular reference to the Ethiopian context.

2.1 Definitions

Programs that are designed for group preferences in order to redress prior disadvantages have been given a variety of names in different countries. As Sowell has documented such names are in the United States of America, as ‘affirmative action’, in Europe, as ‘positive discrimination’, in India, as ‘reservations’, in Sri Lanka, as ‘standardization’, in Nigeria, as ‘reflecting the federal character of the country’, in Canada, as ‘employment equity’, in South Africa, as ‘preferential treatment’ (Sowell, 2004:2). In addition, in many other countries, affirmative action is also referred to as ‘preferential policies’ and ‘compensatory or distributive justice’. Despite differences in names and variations in content, the essence of all policies and reforms introduced to redress gender inequalities would in principle remain the same, basically referring to a wide range of measures aimed at rectifying group inequalities resulting from past discriminatory practices. The US Civil Rights Commission (1977) defines affirmative action as follows:

Any measure, beyond a simple termination of discriminatory practice, adopted to correct for past or present discrimination or to prevent discrimination recurring in the future.

Clearly, this definition calls for active programs rather than mere non-discriminatory laws in order to rectify the effects of prior discriminatory practices and prevent the recurrence of future exclusions thereby enhancing opportunities for disadvantaged groups of society.

Mullen (1988:244) refers to an extensive use of affirmative action programs in both public and private institutions with a view to advance the status of disadvantaged groups of society. He defines affirmative action as:

An attempt to make progress toward substantive, rather than merely formal, equality of opportunity for those groups, such as women or racial minorities, which are currently underrepresented in significant positions in society, by
explicitly taking into account the defining characteristic sex or race which have been the basis for discrimination.

Stanford Encyclopedia of Philosophy (2001) concisely defines affirmative action as:

Positive steps taken to increase the representation of women and minorities in areas of employment, education, and business from which they have been historically excluded.

This definition focuses on only enhancing the opportunities for targeted groups in the enumerated spheres of the society.

When one refers to the definition of affirmative action in the Black’s Law Dictionary (2004) the existence of discrimination is of paramount importance for enacting affirmative action reforms in order to redress past discrimination and prevents future practice.

A set of actions designed to eliminate existing and continuing discrimination, to remedy lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination.

Sabbagh (2012:10) broadly defined affirmative as:

Any measure that allocates goods such as admission into selective universities or professional schools, jobs, promotions, public contracts, business loans, and right to buy, sell, or use land and other natural resources-through a process that takes into account individual membership in designated groups, for the purpose of increasing the proportion of members of those groups in the relevant labor force, entrepreneurial class, or student population, where they are currently underrepresented as a result of past oppression by state authorities and/or preset societal discrimination.

The above descriptions of definitions demonstrate that no consensus has emerged on a clear-cut definition of affirmative action. The broad scope of affirmative action is evident in the above definitions. For purposes of this study, however, affirmative action can be defined as a set of preferential policies designed to redress prior imbalances and enhance
participation and opportunities, with the ultimate goal of creating an equal society for men and women. Such an operational definition posits to investigate the rationale underlying affirmative action programs, regardless of variations in applications in different countries. Affirmative action policies call for action to be taken to ensure equal opportunities for all persons, thereby expanding access and increasing inclusiveness for disadvantaged groups in societies, notably women.

2.2 Meanings and Nature

The phrase “affirmative action” could have different meanings to different people. There is a lack of consensus on its exact meaning among legal scholars and philosophers and it is consequently far from settled.¹ Literally, the term ‘affirmative’ means to agree, to be positive or to show one’s support and ‘action’ means doing something to achieve a particular purpose or goal. Conceptually, affirmative action has come to be comprehended as a policy that refers to a wide range of measures aimed at rectifying group inequalities resulting from past discriminatory practices. Affirmative action, in principle, is designed to enhance the opportunities of members of ‘disadvantaged groups’ in society which have been previously excluded from access to resources and opportunities due to various socio-cultural reasons (Kellough, 2006:3).

Bacchi (1996:15) describes affirmative action as a phrase that refers to various programs, which are designed to redress the inequality of ‘targeted groups’ of society. Accordingly, affirmative action aims at altering the composition of the labor force and to make the public and educational institutions more representative. Kranz (2002:4) similarly explains affirmative action as the practice that required governmental bodies to act affirmatively to recruit workers or admit students on a nondiscriminatory basis. Kranz further calls for adopting measures where employers may arrange special procedures of recruiting women, minorities and for educational sectors to include race and gender as a criterion in admission to remedy the effects of past discrimination (Ibid). Other scholars such as

Holzer and Newmark (2006:463) explained affirmative action programs as “a set of practices undertaken by employers, university admission offices, and government agencies to go further than non-discrimination policies into action, with the goal of actively improving the economic status of minorities and women with regard to employment, education, and business ownership and development”. The notion of affirmative action refers to concrete measures that aim at eliminating barriers and promote equality.

Despite differences in views and variations in practices, the underlying rationale of affirmative action is mainly based on the principle of equal opportunity. Although affirmative action has the same objective as equal opportunity, the former is an active policy calling for actions while the latter is a passive policy in which no action is taken until there is evidence of explicit discrimination (Crosby & Cordova, 1996). As Crosby, Iyer, Clayton and Downing (2003:95) explain:

> In contrast to equal opportunity, affirmative action is an active policy, calling for actions to ensure that equal opportunity actually exists. An underlying presupposition of affirmative action is that structural impediments to true equality do not always take the form of overt discrimination. Even policies that appear to be neutral with regard to ethnicity or gender can operate in ways that advantage individuals from one group over individuals from another group.

Affirmative action policies have already recognized the existing patterns of discrimination, disadvantage and exclusion by providing special benefits to targeted groups of society. In doing so, affirmative action requires institutions to take due consideration of an applicant’s race, sex etc. in admissions to higher education and employment.

**2.2.1 Domain of implementation**

Broadly speaking, there are two domains where affirmative action programs could be implemented: the public and the private. Most countries have affirmative action programs in the public sector and others have both in public and private sectors. In the United States, South Africa and Ethiopia, affirmative action programs take place both in the
public and private spheres while in India the programs are applied only in the public sector. The legal basis and the requirements imposed by affirmative action programs vary across countries. In some countries like India and South Africa, affirmative action policies and executions are based on constitutionally mandated provisions while the legal basis in other countries like the USA, affirmative action is based on non-constitutionally mandated statutory legislation, Presidential Executive Orders, court-ordered and voluntary programs (Reskin, 1988:7). Some countries have mandatory quota/reservation policies such as those in Malaysia, India and Sri Lanka while “goals and timetables” are set in the USA and South Africa (Sowell, 2004). Thomas (1987:402), defined “goals and timetables” as “a "goal" is a numerical target, usually expressed as a percentage, for the hiring or promotion of persons of a particular group while "Timetables" are the deadlines for reaching the numerical goals”. Likewise, the scope of implementing affirmative action policies has a broad range of coverage depending on the socio-economic and political system of the country. Among others, affirmative action programs include jobs, admission to higher education, financial aid, contracts, credit, housing and the like (Schuck, 2002: 17). In the employment sector, affirmative action extends “beyond recruitment and hiring decisions to include promotions, terminations, in-service training, and other workplace practices” (Ibid: 9). Similarly, higher educational institutions use affirmative action “to select students, balance residential units, award financial aid, employ administrators, recruit and promote faculty, run athletic programs, staff student organizations, award contracts, and conduct other aspects of their institutional lives” (Ibid:10).

### 2.2.2 Intended beneficiaries

The basis of the criteria used to determine beneficiary’s eligibility varies from case to case as there are no concrete and uniform ways for identification of appropriate candidates. Nevertheless, beneficiaries of affirmative action programs are often selected on the basis of disadvantages they have suffered in the past either directly or indirectly in the social, economical, political and educational spheres and consequently relegated to lower positions in society. Generally speaking, there are various groups of beneficiaries in different countries which could be entitled to affirmative action programs. As
identified by Faundez (1994:12), minorities (ethnic, national or racial), women, disabled people and war veterans are the most common categories. However, this pattern of categorization varies across countries. While affirmative action policies for women have been a major issue in most countries including the United States, it is only a beginning in the sphere of political representation in India (Sabbagh, 2004:1). As stated by Sowell (1990:13-18), Maori in New Zealand, Sephardim in Israel, Bumiputras in Malaysia, people from backward communities in India and aborigines in Australia and African Americans, Hispanics, women and other ethnic minorities in the United States of America are some of the beneficiary groups.

2.2.3 Types of affirmative action

Affirmative action is sometimes divided into two categories: “weak” or “soft” and “strong” or “hard”. A ‘Weak or soft’ affirmative action category involves taking positive steps to enable members of disadvantaged groups acquainted with positions and promote them to apply, but later treats all the applications received entirely in an impartial way (Schuck, 2002:56). These reforms include “attempts to remove structural impediments which affect particular groups, and strategies, such as training schemes, to assist ‘disadvantaged’ groups to compete more effectively” (Bacchi, 1996:16). In other words, members of disadvantaged groups are encouraged to compete for jobs in recruitment, appointment and promotion. For instance, institutions with a weak affirmative action policy would advertise a vacancy in a way to reach the disadvantaged groups either through the media or make funding to support applicants from such groups.

Alternatively, ‘strong or hard’ affirmative action would include reforms which make membership of a designated group and qualification relevant criteria for access to education and employment (Ibid). This implies that preference will be given to candidates from disadvantaged groups when the applications are actually being evaluated. In other words, being a member of a disadvantaged group would be taken into account in evaluating candidates for admission and hiring. For example, an institution that has strong affirmative action reforms may reserve some places for members of
disadvantaged groups and give preference when examining candidates for admission or promotion. All in all, affirmative action programs ensure equal opportunity for members of disadvantaged groups by giving due consideration in the selection process. Such initiatives include announcements, counseling, mentoring, and training programs. Furthermore, it involves a wide variety of outreach programs aimed at members of disadvantaged groups such as job training for career development, raising awareness, enforcement of non-discrimination rules and introduction of empowerment programs (Crosby et al, 2001:140).

The concept of affirmative action has been controversial among legal scholars, philosophers, politicians and historians alike. In particular, the public debates, which have produced a vast literature, involved both legal and moral issues. It should also be noted that scholars belonging to a variety of intellectual traditions have studied the pros and cons related to affirmative action. The next section will deal with the debates in detail.

**2.3 The ‘Pros and Cons’ of affirmative action**

A wide range of arguments has been provided by opponents and proponents of affirmative action since the inception of affirmative action. The debates on affirmative action revolve around issues pertaining to the necessity of the program, the selection of target groups, the fairness/unfairness of the programs etc. The purpose of this study is not to come up with solutions on the debates, it is rather to review the contending arguments and determine their relevance and merit so far as the notion of affirmative action goes.

**2.3.1 Pro-Affirmative action**

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2 In economic sphere (Leonard: 1984), (Holzer and Newmark: 1999), (Welch: 1989), (Sowell: 1989). In philosophical sphere (Goldman: 1979), (Sher, 1999), (Thomson: 1977) and (Nagel: 1977). In the legal sphere (Fullinwider: 1980) and (Rosenfeld: 1991). In gender-based affirmative action (Johnson: 1990) and (Bergmann: 1996). In the psychological sphere (Clayton and Crosby: 1994) are some of the scholars in the field.
Many scholars including Thomson and Taylor (1973), Crosby and Clayton (1993) and Bergmann (1997) have vehemently argued in favour of affirmative action programs. Although these defenders of preferential treatment have agreed on prior injustices, they provide different justifications on the measures taken to remedy past unfairness. Generally, they have offered three types of justifications based on remediation, redistribution, and role model. Below, the justifications given for each version of the arguments will be examined.

2.3.1.1 Remediation rationale

The remediation rationale justified affirmative action as a means of compensating groups that have been victimized in the past. This rationale is commonly considered as backward-looking and is an argument for reparations. The underlying factor behind compensating disadvantaged groups is based on the fact that had it not been for the discriminations that have been inflicted upon them; they would not have had the level of status they have now. In this regard, Goldman (1979:65-66) pointed out that “the adoption of any distributive rule implies that when violations occur, perpetrators are to be held liable and victims compensated in order to keep distributions as consistent with the demands of the rule as possible”. Thus, when people’s right to equal opportunity has been violated, compensation would be an appropriate means to remedy the effects of historical discrimination against minority groups and women. It has been suggested that the existence of structural discrimination and social perceptions that relegates women to subordinate positions, entitled them to affirmative action (Peters, 1997:76).

Compensatory or corrective justice requires “society to do what it can to restore the victims' descendants to the positions they would have occupied had the wrongs not been committed” (Schuck, 2002: 23). As argued by Hill (2002:394), compensation aims at restoring unfairly harmed individuals to a position where they have had would there be no injury inflicted upon them. In other words, to reinstate individuals to a situation before the injury occurred. The question whether the preferential treatment of women and
minorities should be justified because of the harm they personally suffered or the damage inflicted against the group to which they belong remains controversial.

Several writers opposing the remediation justification of affirmative action suggested that it would be fair to understand the justification if specific individuals claim compensation for the injury they have suffered in the past from those who benefitted. Goldman, in his book entitled: Justice and Reverse Discrimination, argues that preferential treatment would be fair if it aimed directly at compensating individuals who themselves worth it on grounds of actual prior discrimination or denial of equal opportunity (1979:88). This view holds solely perpetrators of injustice liable to pay the damages for their unjust actions. In other words, compensation should be paid by those who benefited intentionally or voluntarily. In this regard, Fullinwider (1995: 89) declares:

If I knowingly and voluntarily benefit from wrongs done to others, though I do not commit the wrongs myself, then perhaps it is true to say that I am less than innocent of these wrongs, and perhaps it is morally fitting that I bear some of the costs of compensation. But it is not like this with involuntary benefits.

Furthermore, Jacobs (2004: 121) criticizes the remediation rationale on two grounds: “The first is: the principal beneficiaries are not the immediate victims of past discriminatory and segregated acts. The second is: those who are obliged to bear the burden were neither the actors nor necessarily the beneficiaries of the injustices. It distributes reparations on the basis of group membership, whereas if reparations are to be made, they should be made to individuals who have been wronged”. In other words, affirmative action programs cannot remedy past injustices because their beneficiaries are not the victims and the non-beneficiaries are innocent.

Most affirmative action advocates allege that discrimination is a group offense and preferential treatment is a means to advance the position of the unjustly treated groups implying that individuals ought to be favored not on their own behalf, but on behalf of the group to which they belong (Thomson, 1995: 58-61). Thomson further argues that every woman and minority group members have suffered and every non-minority and
men has benefited at least indirectly from the effects of past discrimination (Ibid). This view imposes an obligation on the entire community to redress past injustice.

Moreover, Taylor and Bayles, (1995: 9-17) defending the remediation justification suggest that compensation should not be to individuals but to groups to which the initial victims belonged. In particular, Bayles argues that since the characteristic which defines the group was essentially involved in the discriminatory practice, reparations must be made available to all those who have this characteristic (1995:16-17). In addition, Taylor (1995:13) maintains that “the obligation to compensate for past injustice does not fall upon any particular individual but upon the society as a whole”. Thus, the policy of affirmative action is meant to benefit unfairly treated individuals as members of a group, not as individuals; they are representatives of a specific group (1995:13). Preferential treatment for disadvantaged groups notably women is provided to rectify the wrongs suffered in the past. Women are discriminated and victim of unfair actions and practices not as individuals but because they are women. Thomson adds that a debt of compensation is owed to women and minorities as a group thus, job preferences for women and blacks as a form of compensation is endorsed for their past exclusion from the academy and the workplace (1995: 61). In other words, since victims of past discrimination were discriminated as a group, society as a whole should compensate the situation. However, Simon (1995:63) criticizes Thomson’s argument on preferential hiring of women and black people in universities on the ground that preferential hiring is not an acceptable method of recompensing victims of social unfairness. In his own words, “although all blacks and women may be members of a victimized group, they deserve compensation qua victim and not qua black person or woman” (Ibid: 64). According to Simon, it does not follow that if some group members are compensated, the group as a whole is compensated.

Additionally, Boxill (1992:180), an author of (Blacks and Social Justice), argues that “…the present-day whites owe reparations to contemporary blacks, not because they are themselves guilty of causing the disadvantages of blacks, but because they are in possession of advantages that fell to them as a result of the gross injustices of their ancestors”. Such views focus on the past prejudice and the current disadvantages in
contrast with future benefits (Ibid). It is a kind of remedy for past systemic discrimination or deprivation of opportunity against women or ethnic minorities.

Peters (1997:76) in her book entitled (Women, Quotas and Constitution: A Comparative Study of Affirmative Action for Women under American, German, European Community and International Law) shared the view that the existence of structural discrimination and social perceptions that relegates women to subordinate positions, entitled women to affirmative action.

2.3.1.2 Integration rationale

These future or forward-looking arguments have been practical views and emphasize entirely on the welfare of society, social harmony and diversity in the future. It focuses on what ought to be done at present for the good of society in the future. The ‘forward-looking’ proponents aim at bringing societal change and gender equality by means of enabling individuals to get a fair share in the various sectors such as access to educational, employment and other resources. This rationale views affirmative action as a means of including members of racial, ethnic and other groups who might otherwise have been excluded from opportunities and to bring about greater integration of different segments of society (Fullinwinder, 1980:18). The underlying justification for affirmative action is to ensure and advance social goals and welfares. Although the basis for affirmative action under this approach is prior wrongful acts, it is intended to attain future objectives. The integration rationale intended to eliminate the existing gaps between group members in the society by adding disadvantaged members of the group into the labour market and educational institutions. In so doing, it not only improves opportunities for its beneficiaries but also advances the interests of the society in general.

According to the integrationist approach, affirmative action is designed for social utility by not only supporting its direct beneficiaries and the members of historically disadvantaged groups in general, but also by furthering societal goals (Leicht, 1999:309). It calls for distributing opportunities for empowerment, self-realization, and personal
advancement. Furthermore, it promotes the common good and general welfare among all racial and ethnic groups, and of both sexes that constitutes societies. It symbolizes an attempt to break domination of some groups at the top. In short, policies of affirmative action according to this approach are suited best and designed to advance the common good and promote the general welfare (Ibid: 311). Affirmative action in principle intends to integrate society by eliminating sex and racial stereotypes; in a way by reducing sexual and racial injustice with an ultimate objective for everyone to participate in the economic, political and social affairs. This, in turn, will increase the well-being of the society.

Strategically the integration rationale aim at mainstreaming opportunities in order to secure democratic values and for the effective participation of the public at large in the economic, political and development activities. In other words, this approach prevents the concentration of opportunities on one group by applying fair treatment to all sections of the public. It refers to the fair division and allocation of resources and benefits and urges that government has a positive duty with considerable social responsibility to distribute resources and benefits and improve the conditions of the disadvantaged (Fullinwinder, 1980:93).

### 2.3.1.3 Role Model rationale

The role model rationale justifies affirmative action as a means to provide role models and ensures diversity in terms of racial, ethnic, and gender composition in the social, economic, and political institutions. In this regard, affirmative action programs are intended to enhance and promote representation of people from different ethnic and gender groups in professions and educational institutions.

The role model rationale claims that affirmative action is used as a means to improve the social, economic, and political power of those groups whose interests are not adequately represented in important institutions of society. It further counterbalances the assumptions that relegate women and minorities to a lower position in society. Proponents of this school advance the role model argument in higher education. In this context, the role model argument asserts that to hire or admit females or members from
disadvantaged groups has an inspiring effect on young members of disadvantaged groups to pursue academic and professional careers (Allen, 1995:121).

According to the role model rationale, affirmative action has generated better social benefits to disadvantaged groups including women. For instance, it creates role models in order to encourage the next generation and to be able to break down stereotyped assumptions that relegate women and minorities to lower positions in professions and institutions (Ibid: 288). It has been widely argued that affirmative action by and large provided considerable role models that could encourage the next generations in various positions that are more noticeable and advantageous. In this connection, Fullinwinder (1980:18) suggests that placing blacks in “visible and desirable positions would provide additional role models for young blacks and ultimately might result in providing better services to the black community”.

As mentioned above, scholars have recognized the role model argument as one means to encourage and combat inferiority perceptions that continue to exclude disadvantaged groups, notably women. “Role models” are individuals who inspire others to accept their capability of high achievement. According to Thomson, affirmative action could have an attitude changing effect in that when certain groups were seen performing low-paid jobs, others will presume that they just can perform such kind of jobs (1995:47). Thus, negative attitudes could be changed if the same members of the groups are placed in a position requiring higher level of competence and skill thereby demonstrating their capacity to perform. In view of Thomson (1995:48) this, in turn, has two effects: “It changes the belief of members of disadvantaged groups on how they are capable of performing so that they could see members of their race or sex who are accepted, successful and professionals. In addition, it alters others’ attitude towards members of the disadvantaged groups as past discriminatory practices have made women lose their self-respect and respect by others”. It is evident that the negative perception about women has declined their sense of self-image and has ultimately led to the loss of inspiration. Thomson added, “You won’t try to become what you don’t believe you can become unless you have concrete evidence. What is wanted is a role model” (Ibid). Hence, affirmative action provides role models to encourage other youngsters and to breakdown
stereotyped assumptions that would relegate women and minorities to lower positions in professions and institutions.

According to Stroud (1999:390), affirmative action helps to change not only the negative attitude of others towards certain group members but also one’s aspirations towards the career options, which might have been considered not to be suitable for members to pursue. Further, role models for those in the minority community are important in that they see members of their own groups in those roles (Greenawalt, 1982:64). Otherwise, they are likely to accept their traditional roles and positions in society which are less prestigious and less demanding ones (Ibid). Thus, an important aspect of improving young female motivation and education is to put women into positions where they are not adequately represented so that they can serve as effective role models. The role model argument, therefore, serves to break down negative stereotypes thereby enabling women to demonstrate their capabilities. Thus, women as role models would encourage other women to follow in their footsteps.

In light of the above outline, one could safely conclude that the implementation of affirmative action for women can be justified as a strategy and as means for achieving social utility and role models as opposed to compensation to prior discriminations. In sum, the main justifications for affirmative action originate from two key considerations: the need to redress past disadvantage and imbalances, and the vision of an equal society. Although each of these outlooks is discussed as an alternative to the other, there is nothing inherently conflicting in them and they are not necessarily mutually exclusive either. The two perspectives on affirmative action could provide important insights as to how some forward-looking and backward-looking approaches could be useful tools to redress the gender gap. The backward-looking approach aims at redressing the deep structural inequalities resulting from past discrimination. In this way, it considers visions of the past, in order to sufficiently grasp the severity of the harms done. This approach shows the importance of compensation for the wrongs in the past. Alternatively, the forward-looking approach demonstrates the importance of increasing social utility by giving preferential treatment for disadvantaged groups. It basically focuses on current
inequalities. According to such model, affirmative action alleviates the burden and benefits the whole society by promoting diversity and equal opportunity.

2.3.2 Arguments against affirmative action

Basically, the arguments against affirmative action in general and beneficiary groups of the program in particular could be divided into two categories namely, the reverse discrimination and the merit principle argument. Simon (1977), Cowan (1977) and Sowell (1994) have vigorously argued against affirmative action programs. Below, these arguments will be discussed in detail.

2.3.2.1 Reverse discrimination

The phrase “reverse discrimination” as noted by opponents refers to denial of opportunities to qualified individuals in order to grant for targeted groups in a form of affirmative action. Opponents call affirmative action reverse discrimination in that it is just reversing discrimination by considering the same criteria, which was considered as irrelevant and discriminatory in the past (Nickel, 1995:3-4). For opponents, affirmative action is reverse discrimination as it simply overturns the practice of discrimination against other group members. Thus, it is not different from discrimination. The reverse discrimination argument is that, “if we grant as a matter of compensatory justice special advantages or benefits to persons who have been unjustly treated on the basis of a morally irrelevant characteristics (such as being a woman or being black), we are in effect using a morally irrelevant characteristic as if it were morally relevant and thus still engaging in an unjust treatment of persons” (Taylor, 1995:9). Opponents contend that affirmative action contributes to the development of further inequalities. This argument alleges that special treatment to formerly discriminated groups is unjust because it depends on an irrelevant characteristic and thus continues to discriminate other group members of the society (Nickel, 1995:3-4). It is repeating the fault committed previously by considering the morally irrelevant characteristic as if it were relevant (Ibid).
Opponents further argue that the use of such criteria as a basis for providing reparations for the disadvantaged might constitute wrongful discrimination.

The core issues of the debate revolve around whether using the same criteria that had previously been deemed as irrelevant are morally justified. It has been frequently argued that since the characteristic is morally irrelevant, its use as a basis for providing reparations must also constitute wrongful discrimination. However, proponents on the contrary argue that affirmative action is different from the practice of prior discrimination in that it is not based on the idea that certain group members are inherently inferior. According to Nickel (1995:4), such reparations are not wrong because they are not based on the morally irrelevant characteristic. Nickel further argues that being black, for example, is a morally irrelevant characteristic for discrimination against a person, though if a black man receives special consideration as reparation for past discrimination the basis is not the morally irrelevant characteristic of his being black, instead, it is the morally relevant one of his having been subject to unfair treatment because he was black (Ibid).

Affirmative action is criticized as reverse discrimination as it might do injustice and violates individual rights because it introduces irrelevant criteria and penalizes non-beneficiaries of the policy. Further, it has been claimed by opponents that affirmative action burdened innocent individuals to pay the debt of past legacies (Simon, 1995:67). In other words, preferential treatment would be unfair since such individuals are not responsible for the injury done in the past. Affirmative action would increase animosity between beneficiaries and non-beneficiaries of the policy by creating resentment and does harm even to the beneficiaries of the program by stigmatization (Kellough, 2006: 89).

Moreover, opponents allege that beneficiaries of affirmative action programs and the ones who are paying the debts are neither those who have directly suffered the discrimination nor those who had inflicted the damage. Rather the benefit and the burden rest on other members of the groups. However, Thomson, a contemporary moral philosopher, has defended this assertion on the ground that these individuals have directly
or indirectly profited or been harmed by the wrongs inflicted by others (1995: 59). She continues arguing that “even those were not themselves down-graded for being black or a woman has suffered the consequences of the down-grading of other blacks and women: lack of self-confidence and lack of self-respect” (Ibid).

Similarly, Taylor in his article (Reverse Discrimination and Compensatory Justice), holds the whole society liable for past injustice performed against members of the group who were victimized by institutionalized discrimination (1995:14). Due to this, he concludes “society is morally at fault if it ignores the group which it has discriminated against……Whatever owed by individuals to other individuals, institutionalized injustice demands institutionalized compensation” (Ibid). In addition, Nickel (1995:4), in his article (Discrimination and Morally Relevant Characteristics) justified the use of special measures to remedy any individuals who had unjustly discriminated in the past, the basis for such compensation is not because the person belongs to a certain group, but the person was previously subject to unfair treatment because of membership in such group. In sum, the core issues of the debate revolve around whether using the same criteria that had previously been deemed as irrelevant be morally justified. Affirmative action is criticized as reverse discrimination, rather than creating equal opportunity, leads to a form of discrimination against other group members, notably non-beneficiaries of the program which may result in further inequalities in the future. However, affirmative action is different from prior discrimination in that it is not based on the idea that a certain group members are inherently inferior. On the other hand, it has been defended that the policy is just correcting the situation, not discrimination against men or other minorities. It has to do with righting the wrongs committed in the past.

2.3.2.2 The merit principle

Opponents contend that affirmative action policy is fundamentally defective as it violates the rule of hiring by competence and prioritizes group membership over merit. Further, those who oppose the policy of affirmative action claim that positions should be awarded to the most qualified individuals, that is, to those who have the greatest aptitude and skill
for performing the tasks those positions require (Lapenson, 2009: 36). They further consider the individual’s merit as the relevant criteria for determining his/her proper allocation of benefits and burdens. According to this approach, hiring and promotion should be based on merit; people deserve opportunities proportional to their talents. Opponents claim that individual’s ability is the determining factor for the allocation of benefits and burdens irrespective of individual characteristics such as birth, race, colour, sex etc. They underline that allocation of goods or opportunities should be objectively based on one’s merit without taking into account personal characteristics of an individual. Due to this, they state that college admission and hiring should be primarily based on a student’s academic record and qualification of an employee respectively.

Emphasizing the merit principle, Sowell (2004: 175) argues that recruitment, selection and promotion should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity. Sowell further pointed out that compromising the merit principle might result in poor performance because inefficient and incompetent people may be appointed by preference (Ibid: 176). In addition, compromising qualification or giving jobs to less qualified persons will restrain efficiency of the institutional system and ultimately affect the public at large (Polyviou, 1980: 360). In other words, it is argued that compromising merit and competence would affect the interest of beneficiaries of the program themselves and the job. In this way, preferential treatment promotes the stereotype that those beneficiaries of the program are unable to achieve success without special protection and creates feelings of inferiority. In addition, it might lead to stigmatization of beneficiaries of the program.

Alternatively, proponents of affirmative action asserted that the concept of merit itself is subjective with no definite meaning and refers to a criterion pre-determined to fulfill certain recognized social values that are subject to variations. The process of selection, which is made by admissions and personnel officers, has an influence on the stereotypical presumption of decision makers (Young, 1990:132).
In brief, opponents of affirmative action argue that the program actually violates the rights of innocent individuals and compromise qualifications. They call it reverse discrimination, saying it is a new form of discrimination on different group members of society. Moreover, they claim that affirmative action has undesirable side-effects on individuals. However, affirmative action seeks to promote equal opportunity by redressing present socio-economic and political gaps in all societies.

2.4 The Concept of equality

The concept of equality has been a controversial subject in the legal discipline. The concept of equality has meant different things in different settings. It can mean equality of opportunity freedom from discrimination, equal treatment, equal benefit, equal status and equality of result (Rosenfeld, 1991:139). It is therefore very difficult to give a concrete meaning to the notion of equality.

Almost all modern constitutions addressed the issue of equality. Equality has been extensively given various meanings and definitions since long time. Different conceptions of equality are proposed. The classical idea in which Aristotle viewed equality is represented in his distinction between numerical or arithmetical equality which refers to equality in number, and proportional equality refers to equality of ratios (Clifford, 2008:13). Numerical equality is when persons are treated alike without distinction. It focuses on sameness and presupposes the absence of any discrimination. The generally accepted equality principle that Aristotle formulated in reference to Plato is: “things that are alike should be treated alike”. It is equal treatment under law for all citizens. The modern conceptions generally classified the idea of equality into formal and substantive equality.

2.4.1 Formal equality

Formal equality, which has an important role in many national legal systems, stipulates identical treatment of all individuals regardless of their actual circumstances. It is based on the Aristotelian concept of equality that meant to treat like persons alike and unlike
persons unlike (Scales, 1993). This notion of equality requires that similar cases must be treated similarly “according to one and the same rule”. It reflects a generalized idea that a rule applies to one should apply to all. This view operates on the assumption that persons and situations have already been determined to be similar; it does not provide any criteria for relevance (Singh, 1985:16). If all persons were equal in every respect, formal equality would have been sufficient. Formal equality presupposes that all persons are equal bearers of rights. It is ignorant of the socio-economic disparities among groups and individuals in society. When two persons have equal status in at least one normatively relevant respect, they must be treated equally with regard to this respect (Rosenfeld, 1991:14). According to the formal approach, a rule applies to all those who fall within its scope. It does not question the content of the law.

Formal equality presupposes that equality is achieved if the law treats all persons alike. This refers to similar treatment irrespective of background or ethnicity or gender. Holtmaat (2004:2) in her article (The Ideals of Equality and Non-Discrimination: Formal and Substantive equality) describes formal equality as context-independent that applies to all persons regardless of the context. It is characterized by an emphasis on the exclusion of any considerations in decision-making, such as sex or race. She further explains that formal equality ensures that decisions are fair, in the sense of being neutral and based on the notion of merit (Ibid). Formal model of equality refers to applying single standard rules consistently regardless of any distinction. This notion of equality is often criticized as it does not take into consideration personal characteristics of an individual. For instance, in case of gender discrimination, advocates of formal equality would exclude any differences between men and women either biologically or socially. As a result, the formal equality model tends to perpetuate inequality among the sexes for it treats men and women as equals despite unequal access to power and resources. It ignores the real inequality in circumstances.

2.4.2 Substantive equality

Substantive equality requires that differences among social groups be acknowledged and accommodated in laws, policies and practices to avoid adverse impacts on individual
members of the group. A substantive approach to equality evaluates the fairness of apparently neutral laws, policies and programs in light of the larger social context of inequality, and emphasizes the importance of equal outcomes which sometimes requires equal treatment and sometimes different treatment (Ibid). It is obvious that gender equality is achieved when women and men contribute equally to and benefit equally from political, economic, social and cultural development and society equally values the different contributions they make. In other words, a substantive approach of the right to equality recognizes past discriminatory practices and takes various means to achieve equality in practice. Substantive equality is context-dependent, in which various substantive criteria for differential treatments are built into the equality principle (Holtmaat, 2004:4). Equality cannot simply mean that all people should be equal in all respects. This idea of equality takes into consideration the different criteria of the context such as need, merit and worth (Ibid: 6).

The substantive notion of equality refers to treating individuals in relation to their appropriateness (Newton, 1973:18). A substantive approach to equality considers the actual social and economic conditions that have led to inequalities among groups in society. It demands the differential and separate treatment of those who are unequal in order to ultimately bring equality. It involves an appeal to some reason or criterion justifying differential treatment, which has resulted from the historical factors creating socio-economic inequalities (Ibid). Substantive equality takes into account the specific circumstances of groups and individuals and ensures equality of result or outcome. This approach to equality demands positive measures to be taken by States. In recent years, the traditional view that linked the role of the state only with ‘formal equality’ has undergone radical changes (Ibid). This is due to the belief that the removal of formal barriers per se does not bring about equal opportunity. In this regard, Peters (1999:34) argues that substantive equality favors state intervention in order to equalize situations. She further declares that equality is better ensured by differential treatment to enable the participation and inclusion of all groups in institutions and positions. Men and women may be, therefore, treated differently in order to benefit equally either through affirmative action or other measures.
Against this broad spectrum, the next chapter briefly reviews the historical development of affirmative action in three countries namely, United States, India and South Africa. It examines the origin, relevant legislation and methods of implementation of affirmative action programs. In the United States institutional racism was shaped by the slavery system in which people are treated as property. Racist policies and practices existed as a legal institution. India, the second most populous country in Asia, had a deep-seated classification system based on a person’s caste in society. The caste system refers to a stratified social hierarchy in which people were alienated into separate close communities known as caste. South Africa was ruled by a political system called apartheid, which was based on the segregation of races through legislation. Although these countries represent different continents, cultures and socio-economic developments, the historical background to affirmative action demonstrates a history of injustice and an attempt to end discrimination against disadvantaged groups of society.
Chapter 3

3. An Overview of Affirmative action in the United States of America, India and South Africa

This chapter overviews the historical development of affirmative action in three countries, namely, the United States of America, India and South Africa. While the USA and India were chosen because of their early introduction of affirmative action policies in their respective countries, South Africa was chosen as it has recently introduced the policy, following the end of apartheid. The historical context of each country sets the basis for affirmative action programs. The countries under review are composed of multicultural communities with various ethnic settings. However, such communities are disproportionately represented in the socio-economic and political spheres leading to social exclusion and institutional discrimination. Such institutionalized discrimination and underrepresentation has urged the need for the implementation of affirmative action in the countries under review due to a long history of material deprivation and social exclusion. Although the phrase “affirmative action” has originated in the 1960s in the United States; India was probably the first country to have implemented the program of affirmative action since the 1920s. India has called for reservation in order to rectify historical injustices. It is, indeed, the case that race in the USA, the caste system in India and apartheid in South Africa form the foundation of societies on which affirmative action programs in the three countries would be based. Moreover, the mode of implementation of affirmative action programs varies; in the USA not constitutionally grounded polices take the form of preferential treatment, while constitutionally sanctioned mandatory reservation is enforced for eligible candidates in India. In order to rectify the caste system oppression in India, the government has adopted strict quotas in political and public employment spheres for members of targeted groups. Similarly,
South African’s affirmative action policies are constitutionally endorsed. In the section to follow, a brief description and background of the three selected cases will be provided.

3.1 The United States of America

3.1.1 Background

The origin of affirmative action in the United States of America dates back to the racial history through slavery and civil rights era. The historian, Philip F. Rubio, argues that to fully understand the historical development of affirmative action in the United States, one must trace its origins back to the early slavery period in the United States and the resulting relationship between the dominant whites and the minority groups in America. In describing the long roots of affirmative action in America, Rubio (2001:3) writes as follows:

…..affirmative action sums up the story of the United States: the struggle for justice, equality and self-determination and whether African Americans will or even should be able to enjoy chosen labor and increased life chances. It represents the history of white supremacy, privilege, and guilt versus black protest, militancy, and demands for compensation and reparations; black reality against white denial; formal equality versus remedial preferential treatment; and the debate over integration, assimilation, segregation, and separation. The black-led struggle against discrimination has been the primary impetus for people of color, women, and other oppressed groups also to demand political and social equality.

In the USA, the political, economic and cultural discrimination against African Americans practiced at workplaces and educational institutions provided the basis for affirmative action programs to take place. It has to be noted that the introduction of affirmative action is directly linked to the civil rights movement in the USA, which was a political, legal and social struggle by African Americans to gain full citizenship rights and to achieve racial equality (Rubio, 2001:70). In particular the anti-slavery movements which focused on the abolishment of slavery and demands for racial equality and justice leads to the commencement of the American civil war from 1861 to 1865 in the United States. Thereafter, in 1863, President Abraham Lincoln issued the Emancipation
Proclamation that mandated the liberation of slaves in areas under the control of the federacy (Kranz, 2002:6). Likewise, in 1865, the so called Freedman’s Bureau was established for the protection and advancement of newly emancipated slaves in the Southern part of the United States (Rubio, 2001:46). The Bureau supervised all relief and educational activities relating to refugees and the freedmen. It was also involved in various social activities such as the establishment of public schools and hospitals, monitoring civil authorities and resolving domestic disputes (Davis, 1993:7). Following the end of the Civil War in 1865, the US Congress proposed a series of anti-slavery amendments to the US Constitution. Thereafter, the Federal Constitution was amended with a clear mandate to address the issue of racial discrimination and the status and rights of the newly emancipated African Americans. The Thirteenth Amendment to the Constitution that was ratified in 1865 abolished and prohibited slavery throughout the United States. Similarly, the Fourteenth Amendment, which was ratified in 1868 provided for the equal protection of all its citizens including the freed black slaves. Besides, the Fifteenth Amendment that was ratified in 1870 provides full voting rights prohibiting discrimination on account of race, colour or previous condition of servitude.

Thereafter, the so-called “Jim Crow” laws were enacted in the 1880s by the Southern States authorizing segregation between blacks and white communities (Rubio, 2001:70). The “separate but equal” doctrine allows the separation of citizens by race in schools, transportation, public accommodation etc., as long as the services provided for one race were equal to those provided for the other (Rubio, 2001:71). This practice clearly mandated the use of separate facilities for whites and the black people, thereby depriving the latter from opportunities in employment and education. Moreover, the judiciary gave credence to the “separate but equal” doctrine in 1896 with the decision of Plessey v Ferguson 163 U.S. 537 (1896). This was the landmark US Supreme Court case that legitimizes segregation against African-Americans and approved an Act of the General Assembly of the State of Louisiana providing for separate railway carriages for the white and colored races. The first section of the Louisiana Railway Accommodations Act 1890 endorses:
All railway companies carrying passengers in their coaches in this state shall provide equal but separate accommodations for the white and colored races by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations: Provided that this section shall not be construed to apply to street railroads. No person or persons shall be admitted to occupy seats in coaches other than the ones assigned to them on account of the race they belong to.

In the civil rights movement of the 1950’s and 1960’s, individuals and organizations challenged segregation and racial discrimination with a variety of activities including protest marches, boycotts, and refusal to abide by segregation laws. One of the major achievements of the civil rights movement was the Brown v. Board of Education 354 U.S. 483 (1954) decision in which the Supreme Court reversed the segregationist practice of “separate but equal” doctrine as unconstitutional. In this landmark case, the Supreme Court upheld that segregation of children in the public schools solely on the basis of race, denies to black children the equal protection of the laws guaranteed by the Fourteenth Amendment. Education in public schools is a right which must be made available to all on equal terms. The decision declares legal school segregation unconstitutional.

In addition, in 1955, Rosa Parks, an African American, who refused to give up her seat to a white passenger on a city bus in Montgomery, Alabama, was arrested and fined for breaking the laws of segregation (Anderson, 2004:52). This incident sparked the Montgomery Bus Boycott struggle under the leadership of Martin Luther King, Jr., to challenge racial segregation laws (Ibid). Moreover, the civil rights movement came to the national attention in the 1960s. The March on Washington for Jobs and Freedom that was initiated by A. Philip Randolph and took place in Washington, D.C. in 1963 called for civil and economic rights for African Americans (Kranz, 2002:7). During this march, Martin Luther King, Jr., the prominent leader in the civil rights movements, delivered his historic “I Have a Dream” speech. Among other things, the march had an impact for the passage of civil rights legislation. The next section will deal with the consequential legislation in contemporary USA.

3.1.2 Legislation
In the civil rights context, the term “affirmative action” has first emerged in the 1961 Executive Order 10925 by President Kennedy. Section 301(1) states:

The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.

Executive Order 10925 not only required federal contractors to employ workers on a nondiscriminatory basis but also to take “affirmative action” in view of providing equal opportunities in employment for racial minorities without regard to the race of the applicants. Yet, gender was not included in the list of forbidden discriminatory practices. Though, Executive Order 10925 failed to define the term “affirmative action”; it required the contractor to take affirmative action in employment, upgrading, demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship (Executive Order 10925: Section 301(1)).

Furthermore, the 1964 Civil Rights Act, which was signed by President Lyndon Johnson, became an important legislation in the civil rights context. This Act prohibited racial and sex discrimination in public accommodations and employment. Title VII section 703 (a) of the 1964 Civil Rights Act stated:

It shall be an unlawful employment practice for an employer- (1) to fail or refuse, to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s races color, religion, sex, or national origin.

This Act set the stage for more practical measures than simple non-discriminatory provision, which prohibits treating people differently on the basis of their race, sex etc. Section 706 (g) states that a court may order “such affirmative action as may be appropriate” following intentional or unintentional discriminatory practices. Title VII of the Civil Rights Act of 1964 also established the Equal Employment Opportunity
Commission (EEOC), with the authority to impose sanctions for violations and empowered government agencies to cancel contracts with unions and businesses that violated equal employment opportunity provisions. Likewise, President Lyndon Johnson made a speech in 1965 at the commencement ceremony of Howard University in Washington DC, for more aggressive and result-oriented policies. He declared that:

"...But freedom is not enough. You do not wipe away the scars of centuries by saying......Now you are free to go where you want, and do as you desire......You do not take a person who for years has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, ‘You’re free to compete with all the others,’ and still justly believe that you have been completely fair. Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through the gates. This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result (Anderson, 2004:88).

Johnson set the stage for more aggressive, result-oriented policies in his speech. Moreover, the 1965 Voting Rights Act outlawed discriminatory voting practices against African Americans in the US. Thereafter, Executive Order 11246 was introduced on September 24, 1965 by President Johnson as a way of redressing the persisting age old discriminatory practices to give effect to Title VII of the 1964 Civil Rights Act. Section 202(1) reads as follows:

The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Executive Order 11246 requires organizations that would enter contracts with the federal government to take affirmative measures in order to ensure the equal treatment of all employees regardless of their races, colors, religions or national origins. In particular, Executive Order 11246 requires an organization to monitor the underrepresentation of target groups (Blacks, Native Americans, Latinos and Asian Americans) in the workforce and determine the availability of qualified workers (Crosby et al., 2003:96). Later in
1967, Executive Order 11246 was amended by Executive Order 11375 to include gender as a ground for redressing discriminatory practices, which provided the initial legal basis for affirmative action for women in employment (Clayton & Crosby, 1992:14).

Accordingly, Executive Order 11375 requires federal contractors to ensure that members of the vulnerable groups would be employed in fair numbers and treated fairly during employment, and to file periodic compliance reports to that effect. Executive Order 11375 abolished the Committee on Equal Employment Opportunity, instead delegated power to the Office of Federal Contract Compliance Programs (OFCCP), located in the Department of Labor, for the purpose of more effective monitoring and enforcement of the policy directive (Davis, 1993:11). OFCCP is mandated to monitor and enforce the policy directives on the implementation of affirmative action programs. OFCCP further investigates complaints and is authorized to cancel contracts or debar firms and companies from selling goods and services to the federal government (Ibid). However, “if a federal contractor fails to meet its own goals, little or no punitive action would be taken by the OFCCP as long as the contractor was in a position to demonstrate a good-faith effort toward reaching the goals” (Crosby et al., 2003:96). Such compliance reviews, which are carried out periodically either through desk audit or on-site review, make an analysis of the workforce, then, determines whether beneficiaries of affirmative action programs are sufficiently represented in the workforce (Rubio, 2001:140).

President Richard Nixon, who took office in 1969, had transformed the program of affirmative action into an active effort to recruit and promote minorities and women in order to overcome their underrepresentation in employment and educational institutions (Davis, 1993:11). Shortly thereafter, President Nixon added enforcement measures to Executive Order No. 11246 by issuing Revised Order No. 4 in 1971, which is commonly known as the “Philadelphia Order”. Under the Philadelphia Order, Nixon developed the new concept of ‘underutilization’ and ‘availability’ that required government contractors to set up ‘numerical goals’ and ‘timetables’ for hiring members of minority groups and women to be able to measure the progress of hiring and promotion (Ibid). Contractors were instructed to take the term “minority groups” to refer to “Negroes, American Indians, Orientals, and Spanish Surnamed Americans.”
The concept of “underutilization” meant “having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.” “Goals” were not to be “rigid and inflexible quotas” but “targets reasonably attainable by means or applying every good faith effort to make all aspects of the entire affirmative action program work” (Ibid:12). Revised Order No.4 requires all federal contractors and sub-contractors with 50 or more employees or a contract worth $ 50,000 or more to uphold affirmative action plans that would lead to proportional representation of women and minorities in the workforce (Kellough, 2006: 37). To that effect, race, ethnicity, and sex would be taken into consideration in employment, college admissions, and government contracting decisions (Ibid). As Bergmann (1996: 85) explained statistical disparity proves the persistence of gender and race segregation in institutions. Advocating for the use of goals and timetables, Bergmann further emphasized that “in the absence of numerical goals and timetables for meeting them, it is difficult to determine whether managers have done a good job or to hold anyone responsible for failures” (Ibid).

Moreover, two equal employment opportunity programs are adopted: the Rehabilitation Act of 1973 that required the application of affirmative action by the Federal Civil Service and by government contractors for qualified disabled persons; and the Vietnam-Era Veterans’ Readjustment Assistance Act of 1974, which required government contractors to utilize affirmative action for veterans of the Vietnam War\(^3\) were enacted while Gerald R Ford was the president. These acts require federal contractors to develop, maintain, and update affirmative action plans for the equal opportunity employment of disabled persons and veterans of the Vietnam era. Alongside, the US Supreme Court has addressed the issue of affirmative action in employment sector and university admissions in a series of cases. Below, some of these cases are described.

### 3.1.3 Court Cases

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One of the landmark cases in the US, the case of *Regents of the University of California v. Bakke* 438 U.S.265 (1978) set the precedent for affirmative action in higher education. The petitioner, *Allan Bakke*, claimed the policies, which set-aside 16 out of 100 seats for minority applicants, were discriminatory and violated the Equal Protection Clause of the Fourteenth Amendment and Title VII of the Civil Rights Act (Bakke, 438 U.S. at 315-16). Although the court struck down the admission policy of the University of California, Davis School of Medicine, the Court held that race and ethnicity could be considered as a factor in higher education admissions policies provided that the institution has the compelling interest of elimination of ‘serious and persistent underrepresentation of minorities in medicine, which could be seen as a result of past societal discrimination’ (Bakke, 438 U.S. at 317). In this case, Justice Lewis Powell argued that affirmative action programs would be permissible for a university’s admission in which “race or ethnic background may be deemed a ‘plus’ in a particular applicant’s file” (Bakke, 438 U.S. at 317).

Moreover, in the case of *United Steelworkers of America v. Brian Weber*, 443 U.S.193 (1979), the Supreme Court held that a collective bargaining agreement that voluntarily set aside quota for craft-trainee position for black employees did not contravene Title VII of the Civil Rights Act, for the Act did not denounce affirmative action programs in the private sector (Weber, 443 U.S. at 197) Accordingly, private employers are permitted to use racial preferences in hiring and promotions as a means to correct past discrimination.

The first case on affirmative action for women in employment was decided by US Supreme Court in 1987 in *Johnson v Santa Clara* case (Johnson, 480 U.S. at 616). In this case, the Supreme Court addressed the question of whether the transportation agency violated Title VII of the Civil Rights Act of 1964 by taking into consideration the sex of an employee for a promotion (Johnson, 480 U.S. at 619). The Agency set out a plan for preferential promotions for women wherever they were “significantly underrepresented in traditionally segregated job classifications” (Johnson, 480 U.S. at 616, 621). In view of this, the Agency decided that a female applicant ought to be promoted by considering her sex among other relevant factors. However, Johnson, a male employee of the
organization, brought a suit against the Agency after he was denied of a promotion to a road dispatcher. Johnson alleged that a female employee applicant, Diane Joyce was selected in spite of having less qualification for the promotion. According to the Supreme Court, a prior finding of discrimination was not necessary so long as there was an apparent imbalance reflecting underrepresentation of women in traditionally segregated job categories (Johnson, 480 U.S. at 628). The Court generally held that gender could legitimately be considered as a positive factor in recruitment for jobs under a voluntary affirmative action plan because of an imbalance in the percentage of women in a workforce. The court, therefore, held that the plan did not violate Title VII of the Civil Rights Act of 1964 (Johnson, 480 U.S. at 635). Consequently, Diane Joyce was promoted to a position of a road dispatcher in accordance with the affirmative action plan of the Agency in place of Johnson. This case brings an important contribution to women’s rights to equality by allowing employers to implement voluntary affirmative action plans.

Affirmative action has been a subject of contentious debate in the US since its inception. The proponents of affirmative action argue that it is an essential means to remedy the long legacy of racism in American society. Proponents further argue that affirmative action promotes the professional careers of people from groups that have historically been oppressed or denied equal opportunities and prevent future discrimination or exclusion from occurring. Opponents by contrast, contend that it is reverse discrimination. Opponents further claim that it is simply making another wrong for the government to use race or sex in conferring benefits such as government contracts, jobs, or admissions to schools. In other words, opponents view preferences as inconsistent with the ideals of individualism and merit. However, in the 1990s, there has been a shift in the approach towards affirmative action. There was a view that affirmative action is no longer needed as members of beneficiary groups are no more as disadvantaged as they have been in the past. The anti-affirmative action campaign spearheaded all over the country mainly in higher education. Opponents moved to eliminate affirmative action altogether by way of popular referendum. They believe that affirmative action has already served its objectives. The mid-1990s has brought organized efforts against affirmative action in admission to higher education in the US. In the US, affirmative action is considered as a temporary measure that ends once equality has been achieved. It
has to be ended when past imbalances are rectified. Below, the legal and legislative challenges will be examined.

3.1.4 Challenges

Although the public debate on affirmative action has emerged since its inception; the mid-1990s brought both legal and legislative challenges against affirmative action policies in the US. The on-going debates finally led to the elimination of affirmative action in higher education in different states of the US. Among these was, Proposition 209, adopted in California in 1996. The initiative amended the California Constitution to prohibit state government institutions from considering race, sex or ethnicity in public employment, contracting or education. Section 31 is added to Article 1 of the California Constitution. Section 31 states “The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting” (California Civil Rights Initiative: 1996). Generally, the statewide referendum banned the use of affirmative action programs in the public sector. Moreover, in Texas, affirmative action was made illegal in the courts. In 1996, race-based admission practices at the University of Texas law school were struck down in Hopwood v. State of Texas, 518 US 1033 (1996) in which the court banned the use of race or ethnicity as an admission criterion in the recruitment provision of financial assistance or retention of college students. However, after the Hopwood decision, the State of Texas initiated the “Top 10 percent Plan” which ensures that students who graduated in the top 10% of their high schools have guaranteed automatic admission to Texas A & M and University of Texas (An Act of the State of Texas: 1997).

After the passage of Proposition 209, similar initiatives were proposed in different states requesting the prohibition of affirmative action. In 1998, in Washington, the states’ voters enacted Initiative I-200 that ban racial and gender preferences by state and local government (Washington State Civil Rights Initiative 200). Though Initiative I-200 was
not a constitutional amendment, it added to Washington’s state law (Kaufmann: 2007). Section 1, paragraph 1 declares “The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, colour, ethnicity, or national origin in the operation of public employment, public education or public contracting” (Ibid). Likewise, in 2000, the Florida legislature passed the “One Florida” plan, which ends admission programs based on affirmative action in the state university system. The program also included the Talented Twenty Percent Plan that guarantees the top twenty percent admission to the University of Florida system (National Conference of State Legislatures).

In 2003, the US Supreme Court upholds and limits race based affirmative action policies in public universities. The University of Michigan is involved in the two legal cases. In the case of Grutter v. Bollinger (02-241) 539 U.S. 306 (2003), the Supreme Court upheld the affirmative action admissions policy of the University of Michigan Law School as a means of promoting student diversity. In this case, Barbara Grutter, who filed a suit claiming that the Michigan Law School’s policies that aim to achieve diversity through the consideration of race and ethnic origin, are discriminatory and violate the Fourteenth Amendment of the U.S Constitution as well as Title VI of the Civil Rights Act (Grutter, 539 U.S. at 306). The Supreme Court upheld that the affirmative action admissions policy of the University of Michigan Law School was constitutional and appropriate “to further a compelling interest in obtaining the educational benefits that flow from a diverse student body” (Grutter, 539 U.S. at 306).

Conversely, in the case of Gratz v. Bollinger (02-516) 539 U.S. 244 (2003) the US Supreme Court ruled that the university’s point system’s that awarded 20 points to underrepresented minorities “ensures that the diversity contributions of applicants cannot be individually assessed” and was therefore unconstitutional. In this case, Petitioner Gratz and Hamacher, who applied for admission to the University of Michigan’s University, were denied admission. Among other things, the University has considered African-Americans, Hispanics, and Native Americans to be “underrepresented minorities” (Gratz, 539 U.S. at 244). In selection of applicants, the University’s admissions guidelines automatically awarded 20 points of the 100 needed to guarantee
admission for every applicant from underrepresented groups. Petitioners filed the case alleging that the university’s use of racial preferences in admissions violated the Equal protection clause of the Fourteenth Amendment. The court determined that remediating past discrimination is a compelling state interest however; the university’s use of race in admissions policy is not narrowly tailored to achieve educational diversity.

In general, the consideration of race as a factor in admissions by public institutions of higher education was justified to provide a compelling state interest by the court’s decision in *Grutter v. Bollinger* 2003. However, the court held the consideration of race as unconstitutional by the majority opinion of *Gratz v. Bollinger* 2003. Following *Grutter and Gratz* cases, on November 7, 2006 Michigan voters approved the Michigan Civil Rights Initiative known as “proposition 2” to eliminate affirmative action in public education and employment, which subsequently amended Michigan’s constitution to prohibit the use of race and gender in admission and hiring (Questions and Answers Regarding Proposal 2, Available at: [http://www.diversity.umich.edu/legal/prop2faq.php](http://www.diversity.umich.edu/legal/prop2faq.php)). Furthermore, in November 2008, Nebraska voters passed Civil Rights Initiatives 424, a constitutional ban on government institutions from giving preferential treatment to people on the basis of ethnicity or gender (National Conference of State Legislatures). However, Colorado voters became the first in the nation to reject the proposed ban on state affirmative action programs on 8 November, 2008 (Ibid).

Subsequently, in 2010, Arizona voters approved proposition 107 to ban the consideration of race, ethnicity or gender by state government, including public colleges and universities. The State of Arizona outlawed affirmative action in 2010 when voters approved proposition 107. The Constitution of Arizona is proposed to be amended by adding section 36 as follows: Section 36A “This State shall not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting.” (Arizona Department of State: 2010). Moreover, in 2011, the New Hampshire legislature outlawed racial preferences in public colleges (National Conference of State Legislatures). Taken together, seven states have entirely banned affirmative action in public university admissions. It is undoubtedly clear that the aftermath of such initiatives that ban affirmative action will have an impact on women
who have experienced significant gains in education and job opportunities in state and local governments.

In short, affirmative action in the US aims at rectifying the historical effects of institutional injustice and enhances racial, ethnic, gender or other kinds of diversity as a goal within an organization. Moreover, an affirmative action program is intended to address an apparent racial or gender imbalance in traditionally segregated job categories and created as a temporary strategy to bring about equality and encourage inclusion. Affirmative action in the USA, therefore, targeted women and other beneficiary groups because they deserve compensation for past and continuing injustices. However, affirmative action has not been free from rejection since its inception. Its supporters justified affirmative action as a remedy for prior effects of slavery, segregation of the Jim Crow laws and racial discrimination in every aspect of society. Opponents, by contrast, allege for a society where every person is treated as an individual and evaluated on his or her own merits. Claims of unfair treatment and reverse discrimination have become basis in the ongoing debate. Opposition to the application of affirmative action programs remains strong in many areas of the country.

The mid-1990s has brought organized efforts against affirmative action in admission to higher education in the US. The on-going debates finally led to the elimination of affirmative action programs in different states of the US. Some opponents argue that progress has now been made and affirmative action is no longer necessary. Those who support this view claim that discrimination against minorities and women is no longer a problem. However, ending affirmative action in California, Texas, Florida and Washington has had negative ramifications for beneficiary groups as it decreased underrepresented minority enrollment at higher institutions (Hinrichs, 2010: 21). This, in turn, may have a negative impact for beneficiaries by narrowing their opportunities to attend higher education.

3.2 India
In order to understand the historical development of preferential policies in India, it is important to understand the roots of social inequality that has been deeply entrenched in the institution of caste. This section will review the historical basis for this system and the rationale of preferential policies being given to the weaker sections of society in India.

### 3.2.1 Background

The Indian Society is composed of various ethnic groups with diverse cultures and ways of life. It is a multi-ethnic and multi-religious society. The main rationale for India’s affirmative action had to be sought in the caste system in which people were divided into separate closed communities. The caste system refers to a stratified social hierarchy and the term caste is used to specify a group of people having a specific social rank. The Indian term for caste is *jati* (Galanter, 1984:8-9). The overwhelming majority of the populations of the Indian society is religiously divided and composed of Hindus (83 percent), followed by Muslims (11 percent), Christians (2.3 percent), Sikhs (1.9 percent) and finally Buddhists (0.9 percent) (Ibid: 10). The Hindu majority is distinctively subdivided by a caste system or the *varna* into four categories. These are the Brahmins, who are mainly priests and scholars; the Kshatriyas, rulers and soldiers, the Vaishyas, traders and merchants and Sudras the agriculturalists (Zwart, 2000: 236). The caste system links the division of labour with hierarchy. Generally, these four groups were separated in various matters including marriage, contract, division of labour and hierarchy.

Anyone who does not belong to one of these castes is an outcast. These outcaste people are considered to be the *dalits* or the “untouchables” to the four castes (Sowell, 2004:25). Galanter, (1984:15) in his book “*Competing Equalities: law and the backward classes in India*”, listed down the grounds of disabilities associated with untouchability. These are, denial or restriction of access to public facilities, such as schools, offices, courts, to temples, relegation to dirty or menial occupations, residential segregation, separation in

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4 Untouchability means pollution by the touch of certain persons by reason of their birth in a particular caste or family.
utilizing public facilities, restrictions of movement near the areas of higher castes. The untouchables of Indian society work only in jobs considered to be degrading; cleaning the sewages, clearing away dead animals, disposing of garbage, laundering, leather working etc (Ibid). The Untouchables, who were in the lowest rank, were therefore not allowed to associate with or use the same facilities of the higher castes backed up by severe penalties for any violation (Sowell, 2004:25). This was because of their impure status. Untouchability which has its roots in the India’s caste system was a social context of age-old discrimination which necessitated progressive legislation and introduction of affirmative action in India.

The origin of affirmative action or “reservations” as it is known in the Indian context could be traced back to the late 19th and early 20th centuries when India was a British colony (Weisskopf, 2004:10). Weisskopf in his book: (Affirmative Action in the United States and India), explained that affirmative action originated with the development of the anti-Brahmin movement in the 19th century protesting against the monopolization of power by Brahmins who had dominated influential positions of the government (2004:10-11). The anti-Brahmin movement was a struggle to establish “reserved” seats, for non-Brahmins in public services and educational institutions. The Brahmins had often access to opportunities for advancement through education and government services.

Consequently, reservations for non-Brahmins were first introduced in the 1920s in public service positions and higher educational institutions in some provinces (Weisskopf, 2004:10). In 1921, in the Princely State of Mysore and in 1925 in Bombay, the acts of reservations were introduced. Further, a quota system was introduced in 1926 for Muslims, Christians, Anglo-Indians, Parses, Depressed Classes, Aborigines and other communities (Ibid:10). In this way, quotas for non-Brahmins were initiated as a response to the movement that sought for positive measures designed to remedy the discrimination that has existed over the centuries against disadvantaged members of the community.

The vast reservation policies were introduced in the 1930s in the political sphere, although major constitutional reforms had begun in the late 1920s to establish a federal assembly as well as provincial assemblies where the different groups were represented
The British had offered the creation of separate electorates, that is, “a representation of a particular group by a legislator chosen by an electorate composed solely of members of that group” to four minority groups: Muslims, Christians, Sikhs, and Anglo-Indians (Ibid; 1984:45). However, the creation of separate electorates for the untouchables (then known as Depressed Classes) was strongly contested by Mahatma Gandhi, the leader of the Indian nationalist movement. Gandhi made all his efforts for the eradication of untouchability and as well as unity between Hindus and Muslims with the goal of independence from Britain. In his efforts to bring untouchables back into Hindu society and the political mainstream, Gandhi renamed untouchables as “Harijans” (People of God) (Sowell, 2004:25). Alternatively, Dr. B. R. Ambedkar, leader of the Dalit movement and who was born an “untouchable”, has strongly recommended for the same arrangement of separate electorate for the untouchable community. Ambedkar, a distinguished scholar doubted that upper-caste Hindus would ever treat the Harijans as equals. He, therefore, demanded for a system of separate electorates that would have allowed the “Untouchables” to select their own representatives (Galanter; 1984: 30).

After an intense struggle on the issue, the two leaders reached a compromise agreement, under which the untouchables of India would be part of the general electorate but would still have reserved legislative seats (Ibid: 32). A compromise between the leaders of caste Hindu and the depressed classes was reached on a conference convened in Bombay on September 24, 1932, popularly known as Poona Pact which unanimously adopted the following resolution-

This Conference resolves henceforth, amongst Hindus no-one shall be regarded as an Untouchable by reason of his birth, and that those who have been regarded hitherto will have the same right as other Hindus in regard to the use of public wells, public schools, public roads and all other public institutions. This right shall have statutory recognition … it shall be the duty of all Hindu leaders to secure, by every legitimate and peaceful means, an early removal of all social disabilities now imposed by custom upon the so-called Untouchable class, including the bar on right of admission to temples (Poona Pact and its agreement, 2011).

The following is the text of the agreement arrived at between leaders acting on behalf of the Depressed Classes and of the rest of the community, regarding the representation of
the Depressed Classes in the legislatures and certain other matters affecting their welfare (Ibid):

1. There shall be seats reserved for the Depressed Classes out of general electorate seats in the provincial legislatures as follows:- Madras 30; Bombay with Sind 25; Punjab 8; Bihar and Orissa 18; Central Provinces 20; Assam 7; Bengal 30; United Provinces 20.Total 148. These figures are based on the Prime Minister’s (British) decision.

2. Election to these seats shall be by joint electorates subject, however, to the following procedure-All members of the Depressed Classes registered in the general electoral roll of a constituency will form an electoral college which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats by the method of the single vote and four persons getting the highest number of votes in such primary elections shall be the candidates for election by the general electorate.

3. The representation of the Depressed Classes in the Central Legislature shall likewise be on the principle of joint electorates and reserved seats by the method of primary election in the manner provided for in clause above for their representation in the provincial legislatures.

3.2.2 The Constitution

After India became an independent nation in 1947, the Constitution, which was adopted in 1950 has abolished “Untouchability” and made its practice a criminal offence in order to secure further equality amongst its people (Article 17).

The Constitution of India guarantees the right of all its citizens to justice, liberty, equality, and dignity. The preamble reads as follows:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of
status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.

Furthermore, the constitution provides provisions for fundamental rights that also made the basis for reservations for disadvantaged groups. Specifically, the Constitution guarantees the right to equality to citizens as well as non-citizens and provides equality of opportunity in the matter of public employment (Articles 14-16). Moreover, the constitution prohibits discrimination on grounds of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of entertainment or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partially out of State funds or dedicated to the use of the general public (Article 15). Such prohibition of discrimination not only applies to states but also extends to private individuals.

Most importantly, the Constitution has introduced reservation programs to ensure that the oppressed castes would have access to higher education and better jobs. This system of “reservations”, or quotas, gives untouchables and other underprivileged groups, proportional representation in legislatures, government jobs, and educational institutions. A wide range of preferential policies were provided for three categories of people, namely, “Scheduled Castes”, “Scheduled Tribes” and “weaker sections” or “Other Backward Classes” (Articles 15&16). The first category is “Scheduled Castes”. The term “Scheduled Castes” is defined as “castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution” (Article 366(24)). The second category is “Scheduled Tribes”. The term “Scheduled Tribes” is defined as “such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution” (Article 366(25)). The Constitution provides a special protection to protect the backward classes from being exploited. The third category is Other Backward Classes. Although the Constitution

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5 The Constitution of India, 1950: Article 341 Scheduled Castes-
neither defines “Other Backward Classes” nor does it provide the criteria for their identification, it is the constitutional obligation of the government to promote the welfare of the Other Backward Classes (Articles 15(4), 16(4) and 29(2)). The common criteria for classification of Other Backward Classes is socially and economically backwardness than the rest of the citizens. Courts examined the criteria laid down for the determination of backward classes.6 The Indian Constitution provides for the appointment of a commission to investigate the conditions of Backward Classes.7

Accordingly, the first “Backward Classes Commission” was set up by a presidential order on January 29, 1953, under the chairmanship of Kakasaheb Kalekar, commonly known as

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause(1) any caste, race, or tribe or part of or group within any caste, race or tribe but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 342 Scheduled Tribes-

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause(1) any caste, race, or tribe or part of or group within any caste, race or tribe but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.


7 The Constitution of India, 1950: Article 340 of says:

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.
the Kalekar Commission to determine the criteria to be adopted in selection of people who should be treated as socially and educationally backward classes, prepare a list of such classes and investigate their conditions (Zwart, 2000: 240). This Commission submitted its report on March 30, 1955 on identifying four criteria to determine backwardness. These are: low social position in the caste hierarchy, lack of educational progress; inadequate representation in government services; and inadequate representation in the fields of trade, commerce and industry. Among other things, recommendations of the Commission include treating all women as ‘backward class’, reserved 70% seats in all technical and professional institutions for qualified students of backward classes and reservation of seats in all governmental and local body services; the basis of representation of Other Backward Classes should be Class I: 25% of vacancies; Class II: 33.5% of vacancies; Class HI & IV: 40% of vacancies (Galanter, 1984:172). Nevertheless, identification of groups who would be qualified for the benefit of reservations was problematic for a prolonged period of time (Sowell, 2004:14).

In 1978, the second Backward Classes Commission, under the chairmanship of B.P. Mandal, popularly known as the Mandal Commission, was appointed to determine the list of groups qualifying as beneficiaries and set the recommendations for the advancement of “backward” classes not sufficiently represented in educational institutions and public employment (Zwart, 2000:242). Accordingly, the Mandal Commission recommended that Other Backward Classes be granted employment reservations in government posts and educational institutions (Weisskopf, 2004:14).

Galanter (1984:43) classified India’s preferences into three basic types. First, there are reservations, which allotted or facilitate access to valued positions or resources. The most important instances of this type are reserved seats in legislatures, reservation of posts in government service, and reservation of places in academic institutions. Second, there are programs involving expenditure or provision of services for example, scholarships, grants, loans, land allotments, health care, and legal aid to the beneficiary groups. Third, there are special protections. These distributive schemes are accompanied by efforts to protect the backward classes from being exploited and victimized.
3.2.3 Reservations

Basically there are three kinds of benefits for beneficiaries of affirmative action programs in India. The first is political reservation. In the sphere of politics, the Indian constitution allocated a special measure in the form of reservations, designed to secure the improvement of the Scheduled Castes and Scheduled Tribes, by reserving a percentage of seats for members of these groups in legislative assemblies. For the purpose of enhancing political participation, the Constitution provides for reserved seats in proportion to their numbers for the Scheduled Castes and Scheduled Tribes in the Lok Sabha, (the House of the People or lower house of parliament of the Union). Similarly, seats are reserved in Vidhan Sabhas, lower houses of the legislative assemblies of the states in favor of Scheduled Castes and Scheduled Tribes in proportion of their population in that particular state (Article 332). However, no seats are reserved in the upper houses, central or state (Article 330). Likewise, there are no reservations in legislatures for the Other Backward Classes (Galanter; 1984:44). Such reservations in legislatures were subjected to a time frame limit. Originally, it was ten years after the promulgation of the Constitution (Article 334). However, the period has been extended every ten years by successive amendments to the constitution.8

In addition, India has introduced reservations for women in Panchayat9 and Municipality. More specifically, not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (1950, Article 243 D (3)). Moreover, in the Panchayats at each level, not less than one-

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9 Article 243(d) of the Constitution of India,1950, "Panchayat" means an institution (by whatever name called) of self-government constituted in every State, at the village, intermediate and district levels in accordance with the provisions of this Part.
third of the total numbers of offices of Chairpersons are to be reserved for women (Ibid: Article 243 D (4)). Likewise, in Municipality, not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipalities to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3)). Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may provide by law (Article 243 T (4)).

The Women’s Reservation Bill which was first introduced in 1996, though it has been debated in parliament several times since then, has remained enmeshed in controversy because of lack of political consensus. After a long and controversial discussion, the Women’s Reservation Bill was passed in March 9, 2010 by the upper house, Rajya Sabha, and is still pending in the lower house, Lok Sabha. (http://articles.timesofindia.indiatimes.com/2010-03-09/india/28137030_1_unruly-scenes-women-s-reservation-bill-constitution-amendment-bill). This Bill provides one-third of reservation of the total available seats for women in the lower house of Parliament, the Lok Sabha, and in state and local governments. Advocates of the Bill assert that the Bill leads to gender equality in parliament. It enhances political participation and results in the empowerment of women as a whole. Women, therefore, get more participation in politics and society. Opponents, in contrast, contend that the Bill would deny adequate representation of men leaders’ in the political power. It can be suggested that in order to enhance women’s representation and access to decision making bodies, the Bill gets passed in the lower house.

The second is job reservation in government posts. The reservation of posts for Scheduled Castes and Scheduled Tribes in jobs or government services is the other preferential scheme in the field of employment since 1950s. The Constitution provides for reservation of seats in government employment. Article 16(4) states:
Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

It is significant that Article 16 (4) permits reservation in government service for backward class of citizens at the initial stage of recruitment and later stage of promotion. However, unlike mandatory reservation provisions in legislative assemblies, the above provision neither confers a right on individuals nor obliges a government to reserve seats in public services. It confers a discretionary power on the state to take suitable action. Furthermore, the Constitution provides that the claims of members of Scheduled Castes and Scheduled Tribes shall be taken into consideration in the making of appointments to services and posts in connection with the affairs of the union or of a state (Article 335). However, it is noteworthy that the phrase “consistently with the maintenance of efficiency of administration”, is included to prevent any inefficiency in the administration by such special provision for Scheduled Castes and Scheduled Tribes. Even if reservations are provided in promotions, a provision for lower qualifying marks or lesser level of evaluation is not permissible in the matter of promotions.\(^{10}\)

Finally, there is a reservation in educational institutions. In the field of education, the Indian amended Constitution of 1951 under Article 15 (4) declares that the state is not prevented in the Constitution from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. Educational preferential arrangements in this context included scholarship programs, provision of meals and hostels for Scheduled Castes and Scheduled Tribes students (Galanter, 1984:56).

\(^{10}\) Eighty-second Amendment Act, 2000, Article 335: “Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the union or of a State.”
3.2.4 Institutional framework

With regard to monitoring the implementation of reservation policies, the Constitution created a ‘Special Officer’, commonly known as the Commissioner to investigate the implementation of measures intended to safeguard the interests of Scheduled Castes and Scheduled Tribes and submit periodical reports to the Parliament (Article 338). Parliament also obtains reports from the central and state governments and the National Commission for Scheduled Castes and Scheduled Tribes, from the Union Public Service Commission at the center and State Service Commissions in the states (World Bank Report, 2001:10). The central Ministry of Personnel, Public Grievances and Pensions frame guidelines about how to implement and monitor affirmative action in public service (Ibid:11). Accordingly, individual ministries, departments and public agencies follow those guidelines and issue necessary executive directions (Ibid).

In addition, there are various bodies responsible to monitor the implementation of affirmative action programs in India (Ibid: 14-15):

- Parliamentary committees such as the Joint Committee on Welfare of Scheduled Castes and Scheduled Tribes. The Parliamentary committee to ministries and public enterprises also assess and report on the implementation of reservation policies.
- Standing Committee on Personnel sends study groups to ministries and public enterprises to assess implementation.
- The central Ministry of Personnel examines execution of affirmative action in organizational departments. The inspections assess the department’s compliance in implementing orders for the reservation for Scheduled Castes and Scheduled Tribes, the correct maintenance of rosters, and the procedures for filling vacancies reserved for these groups. Each department inspects agencies subordinate to it. For instance, to monitor women’s representation in the public service, a Focal Point was set up in the Ministry of Personnel that conducts review of rules and regulations to reduce gender bias in the civil service.
- The National Women’s Commission also promotes women’s advancement at all levels of public service and interferes in cases of discrimination.
Moreover, various bodies are held responsible to handle complaints regarding affirmative action programs. In case of grievance, any employee aggrieved about the implementation of affirmative action in public services can complain to (Ibid: 15):

- The Head of the department, or directly to the Ministry of Personnel.
- To the National Commission for Scheduled Class and Scheduled Tribes, the Commission for Backward Classes or the National Commission for Women.
- To the central or state administrative tribunals and High Courts for legal remedy.

The courts have also played a major part in interpreting constitutional provisions concerning reservations in public service. To mention, one of the leading cases on reservation policy before the Supreme Court was the *MR Balaji v State of Mysore case* (1963), *AIR 649 (SC)*. In this case, the issue was an order of the State of Mysore reserving 68% of seats in all Professional Colleges and Technical Institutions for Scheduled Class and Scheduled Tribes, the Commission for Backward Classes. The State of Mysore scheme reserved a total of 68% of places in engineering and medical colleges 15% for scheduled castes; 3% for scheduled tribes; and 50% for backward classes (Galanter, 1965: 259-60). The Court held that the reservation of sixty-eight percent by the State of Mysore was not consistent with Article 15 (4) of the Constitution; and under no circumstances can the reservation exceed fifty percent. The Court held that the caste of a group of persons may be a relevant factor, but not the sole criteria for determination of backward class. The Court further ruled that poverty, occupation and habitation are also factors contributing to social backwardness. Consequently, the Court struck down the law mandating 68% reservation as it was based solely on caste without regard to other relevant factors. The Court declared that a formula must be evolved which would strike a reasonable balance between the interests of the weaker sections of society and the interests of the community as a whole (Ibid: 273). The Court held that:

If admission to professional and technical colleges is unduly liberalized, the quality of our graduates will suffer. That is not to say that reservation should
reservation should and must be adopted to advance the prospects of the weaker sections of the society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centers to deserving and qualified candidates of other communities. A special provision contemplated by Article 15 (4), like reservation of posts and appointments contemplated by Article 16 (4) must be within reasonable limits (SC, 469-470).

In addition, the case of State of Kerala v. Thomas ((1976) 2 SCC 310), is a landmark case that critically analyses Article 16 (4) of the Constitution. This case involved the validity of an arrangement in favour of the Scheduled Castes employees by exempting them from taking the departmental test for promotion in services. The Government made it obligatory for an employee to pass the special departmental tests for promotion of a lower division clerk to the next higher post of upper division clerk. However, Rule 13A of the Kerala State Subordinate Services Rules 1958 provides that no person shall be eligible for appointment to any service or any post unless he possessed such special qualifications and has passed such special tests as may be prescribed on that behalf in the Special Rules. Provision 2, to this rule gave temporary exemption from passing the departmental tests for a period of two years for Scheduled Castes and Scheduled Tribes candidates. Accordingly, the State Government introduced Rule 13AA giving further exemption of two years to members of Scheduled Tribes and Scheduled Castes. As a result of this rule, thirty four out of fifty one posts were filled up by members of Scheduled Castes and Scheduled Tribes without passing the test. Thomas, a lower division clerk who was not promoted despite his passing the test, questioned rule 13AA as it violates the fundamental rights guaranteed to him under Article 16 (1). The High Court upheld that Rule 13AA was discriminatory and violates Article 16 (4). Nevertheless, the Supreme Court of India held that a State does not violate the constitutional guarantee of equality of opportunity when the state promotes members of Scheduled Tribes and Scheduled Castes who have failed to pass tests required by all other employees for promotion. The Court further argued that the State is free to choose any means to achieve equality of opportunity for

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11 Article 16 (4) stipulates that “nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State”.

12 Article 16 (1) states that “there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”.

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these backward classes; as the Constitution itself does not put any limitation on the power of the Government under Article 16 (4) (SC 998-1000).

In brief, the Indian Constitution firmly affirms the economic and educational betterment of the weaker section of the society. The Constitution further provides for reservation policies for Scheduled Castes, Scheduled Tribes and Backward classes, who had been subjected to systematic and extensive social and economic discrimination through the caste system. In India, reservation policies that were introduced several decades ago apply in the political sphere, in government posts and educational institutions. Similarly, the history of apartheid and segregation of people necessitated affirmative action programs in South Africa. The next section deals with the case of South Africa.

3.3 South Africa

3.3.1 Background

South Africa was under the system of apartheid (1948-1994) that sought to regulate human relations along racial lines based on the policy of segregation of races. Such an institutionalized regime of racial segregation had been one of the defining features of apartheid in South Africa (CIA Fact book, 2013). To that effect, numerous apartheid measures had been introduced that limited access to jobs and economic resources by blacks. People’s political rights, property rights, freedom to work, the right to education and family rights were severely restricted through these laws and regulations. These discriminatory laws touched every aspect of social life. Some of the apartheid laws are:

- The Prohibition of Mixed Marriages Act No. 55 of 1949. This Act prohibits marriages between white and other races;
- The Immorality Amendment Act No. 21 of 1950. This Act bans extra-marital sexual relations between white people and people of other races;
- The Population Registration Act No. 30 of 1950. This Act requires residents to be registered according to their racial group. It required people to be identified and
registered as one of the four distinct racial groups: white, coloured, Bantu (Black African) and Indian (Asian);

- Separate Representation of Voters Act No.46 of 1951. This Act sought to remove coloured voters from the common voters’ roll in the Cape;

- The Women’s Enfranchisement Act of 1930. Under this Act, only white men and women had the right to vote and to be elected to the Houses of Parliament;

- Bantu Education Act No. 47 of 1953. This Act provides racially separated educational facilities for blacks in education. This Act established an inferior education system for blacks, devised a separate set of educational materials intended to produce manual laborers to work in low-level jobs;

- Extension of University Education Act No. 45 of 1959. This Act provides for the establishment of separate tertiary institutions along racial lines; and

- The Industrial Conciliation Act No. 28 of 1956. The Act prohibited the registration of any new 'mixed' unions and imposed racially separate branches and all-white executive committees on existing 'mixed' unions. The Act also banned political affiliations for unions and legalized the reservation of skilled jobs to white workers. In addition, black workers were neither permitted to belong to a registered union nor make strikes (http://www.sahistory.org.za/politics-and-society/apartheid-legislation-1850s-1970s.).

Consequently, people would then be treated unjustly based on their racial backgrounds in their participation in social, economic and political life as well as educational opportunities. This, in turn, created social inequalities that were ingrained and reflected in all spheres of social life. In short, apartheid in South Africa marginalized people not only from political power but also from participation in any spheres of life including economic resources. Needless to say, apartheid had an overwhelming effect on the social, economic, political and cultural life of black South Africans and women in particular.

Apartheid was widely condemned throughout the world and denounced by the international community as unjust and a crime against humanity.\(^\text{13}\) Besides, the struggle of the people within South Africa has made a major contribution to bring the era of

\(^{13}\) See the UN Convention on the Suppression and Punishment of the Crime of Apartheid, 1973.
apartheid to an end. Domestically, community struggles over the apartheid legislation continued throughout the 1950s. Notably, Nelson Mandela (one of the founding members of the ANC) had strongly opposed and fought against the apartheid system to achieve freedom and equal rights for every South African.\textsuperscript{14} Alongside, the women’s struggle against both gender inequality and racial oppression gained momentum. Women’s organizations were established to mobilize women and promote gender equality and development amongst women. In particular, the Founding Conference of the Federation of South African Women adopted the Women’s Charter in 1954. The aim of the Organization was to unite women in common action for the removal of all political, legal, economic and social disabilities and to obtain, inter alia, the right to vote, equal family rights and educational and economic opportunities (Women’s Charter, 1954). Meanwhile, in the 1990s, due to the international pressures and the internal anti-apartheid struggle, South Africa embarked upon peaceful transition to majority rule. In 1994, the ANC-led government won victory in the county’s first universal suffrage and Nelson Mandela was elected president (CIA Fact book, 2013). Since then, South Africa began to redress the imbalances created during the apartheid era.

\textbf{3.3.2 Legislative framework}

The Interim Constitution of South Africa which came into force in 1994 established a new democratic order based on the recognition of human rights, democracy and peaceful co-existence and development opportunities irrespective of colour, race, class, belief or sex. The 1994 Constitution further called for “measures designed to achieve adequate protection and the advancement of people who were disadvantaged by past discriminations” (Section 8 (3) (a)). Finally, after two years of extensive public debate, 

\textsuperscript{14} In 1912, the South African Native National Congress was formed in Bloemfontein. It was renamed the African National Congress (ANC) in 1923. It had as its main goal the elimination of restrictions based on color and to give all South Africans equal rights. In the early 1960s, following the massacre in Sharpeville which resulted in 69 death and 180 injured protestors. Subsequently, the ANC and the Pan-African Congress (PAC) were banned. Nelson Mandela and many other anti-apartheid leaders were convicted and imprisoned for life on charges of treason. During these periods the struggle for liberation continued underground.
The new constitution of South Africa was promulgated in 1996. The 1996 Constitution established a new democratic order based on “human dignity, the achievement of equality and the advancement of human rights and freedoms” (Chap. I). The Constitution further embodies the fundamental human rights under Chapter Two of the Bill of Rights.

This Bill is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom (Section 7 (1)).

The Constitution guarantees everyone the basic rights and freedoms and protects the civil, political and socio-economic rights. Moreover, the Constitution guarantees that “everyone is equal before the law and has the right to equal protection and benefit of the law” (Section 9 (1)). However, it is recognized that injustices of the past have already led to unfair social inequalities and these inequalities cannot be addressed by the formal notion of treating everyone equally; undeserved inequalities call for rectification. It is evident that to promote social equity and to redress inequalities, specific measures and strategies are necessary. Therefore, in order to treat all persons equally and provide genuine equality, the Constitution has provided for affirmative action measures under Section 9 (2). It reads:

Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, the Constitution allows for the promulgation of legislative and other measures to protect or advance persons disadvantaged by unfair discrimination.

The Constitution mandated to move further beyond formal equality to substantive equality by acknowledging the differences and treating people differently on the basis of these differences. Affirmative action measures are, therefore, perceived as a legitimate means of achieving substantive equality to those previously disadvantaged by unfair discrimination. The Constitution further prohibits unfair discrimination and specifically lists the following grounds “race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth” (Section 9 (3)). It also provides that national legislation must be enacted to prevent or prohibit unfair discrimination (Section 9(4)). To give effect to these
constitutional rights, the government enacted a series of statutes that restructure institutions of higher education and the workplace.

The Higher Education Act of 1997 formed the basis for addressing educational equity in Higher Education. The Preamble states categorically, inter alia, that the Act should contribute towards “redressing past discrimination, ensuring representivity and equal access, pursuing excellence and promoting the full realization of the potential of every student, tolerance of ideas, and appreciation of diversity”. In order to achieve its objectives, the Act requires every public higher education institution to establish an institutional forum. The purpose of this institutional forum is to advise the council of the particular institution on race and gender equity policies, the selection of candidates for senior management positions and dispute resolution procedures (South Africa Higher Education Act 1997: Section 31(1) (a)). With regard to admission, the Act specifically requires that the council of a public higher education institution “determines the admission policy, the entrance requirements in respect of particular higher education programs, the number of students who may be admitted for a particular higher education program and the manner of their selection” (South Africa Higher Education Act 1997: Section 37). Furthermore, the council should “publish the admission policy and make it available on request and provide appropriate measures for the redress of past inequalities and may not unfairly discriminate in any way” (Ibid). Moreover, in order to redress past inequities and imbalances in higher education, the government enacted the Education White Paper No. 3 in 1997. This white paper outlines a comprehensive set of initiatives for the transformation of higher education. The Education White Paper proclaimed the need for higher education to be transformed to meet the challenges of a new non-racial, non-sexist and democratic society committed to equity, justice and a better life for all (Section:1.6). Alongside, the white paper provides a basis against which Higher Education transformation could be monitored, assessed and expedited. The system of quotas was not employed to achieve equity and redress in higher education. Instead, institutions were required “to develop their own race and gender equity goals and plans for achieving them, using indicative targets for distributing publicly subsidized places rather than firm quotas” (Section: 2.28).
Most importantly, the 1998 Employment Equity Act (EEA) provides the implementation framework of affirmative action. EEA aimed at workplace reform through employment equity programs as strategies to rectify past racial discriminatory practices. The purpose of the EEA is to advance the right to equality, to abolish unfair discrimination in the workplace and guarantee employment equity through implementing affirmative action measures (Section 2). EEA defines affirmative action measures as “measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer” (Section 15 (1)). In this context, designated groups who were eligible for affirmative action measures include black people, (Africans, coloureds, Indians), women and people with disabilities (Section 1). Affirmative action measures include the “identification and elimination of barriers with an adverse impact on designated groups; the promotion of diversity; making reasonable accommodation for people from designated groups; retention, development and training of designated groups (including skills development); and preferential treatment and numerical goals to ensure equitable representation, but exclude quotas” (Section 15 (2&3)). Every “designated employer”\(^\text{15}\) has the obligation to undertake affirmative action measures for people from designated groups (Section 13). However, an employer was not required to appoint persons who were not “suitably qualified” for a job. The requirements to determine whether an applicant is suitably qualified include formal qualifications; prior learning; relevant experience; or the capacity to acquire within a reasonable time, the ability to do the job (Section 20 (3)). In other words, employers must make sure that designated groups have equal opportunities in the workplace without compromising merit. The

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\(^{15}\) Republic of South Africa, Employment Equity Act No.55 of 1998: Section 1.

Designated employers means-

a) An employer who employs 50 or more employees;

b) An employer who employees fewer than 50 employees, but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of Schedule 4 of this Act;

c) A municipality, as referred to in Chapter 7 of the Constitution;

d) An organ of state as defined in section 239 of the Constitution, but excluding local spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Service; and

e) An employer bound by a collective agreement in terms of section 23 or 31 of the Labour Relations Act, which appoints it as a designated employer in terms of this Act, to the extent provided for in the agreement.
central theme of affirmative action in this context is to ensure that the previously disadvantaged groups are fairly represented in the workforce of a particular employer. In addition, in making decisions on job suitability an employer is not allowed to unfairly discriminate against a person solely on the grounds of lack of relevant experience (Section 20 (5)). In brief, these measures were to be taken by employers in order to ensure that members of disadvantaged groups were adequately represented in the workforce and would have equal opportunities to compete in jobs. It must therefore be borne in mind that affirmative action can only be used as a justification ground for equitable representation of qualified persons from the designated groups. Affirmative action programs in South Africa cover a wide range of activities in educational and employing institutions. However, unlike in India, the Constitution does not provide for quotas in the allocation of posts or places in favour of disadvantaged groups in South Africa.

3.3.3 Institutional framework

In order to transform the public service into an efficient and effective instrument, the government published the White Paper on affirmative action in April 1998 (Jain et al, 2003:110). This white paper set out a framework for creating a representative public service and provides guidance on the steps for national departments and provincial administrations to take in developing their affirmative action programs (Jain et al, 2003:110). More specifically, this policy document outlines the accountability, monitoring, reporting, and coordinating responsibilities of various role players (Section: 1.1). This white paper, which focuses primarily on human resource management in South African public service, targets three groups, namely black people (African, coloured, and Indian people), women and people with disabilities (Section:1.7 &1.4). Moreover, the White Paper on affirmative action in the public service suggests that affirmative action should be an integral element of every aspect of the organization’s management practices (Section: 3.1). Affirmative action is thus the responsibility of every manager, supervisor and human resource practitioner, who will be required to implement affirmative action plans and be held responsible for these (Section: 3.1). Alongside, national departments
and provincial administrations should develop and manage their own policies to reflect their own particular circumstances as far as they are in line with this white paper (Section: 3.2). The responsibility and accountability for drawing up and implementing affirmative action plans in the public service rests with the individual national departments and provincial administrations (Section: 4.8). Within these institutions, individual managers will ultimately be held responsible for the success of affirmative action (Swanepoel et al; 2005:182).

In addition, the Department of Public Service and Administration has an important coordinating role. It supports the national departments’ and provincial administrations in various ways. More specifically, it has the following roles:

- Conduct a Public Service-wide communication campaign explaining the goal, objectives and principles set out in this White Paper;
- Develop practical guidelines for developing affirmative action programs;
- Establish a network of affirmative action practitioners;
- Abolish or amend rules and regulations which unnecessarily restrict affirmative action activities and initiatives;
- Evaluate and report to the Parliamentary Portfolio Committee on Public Service and Administration on the effectiveness of the policy set out in this White Paper;
- Assist national departments and provincial administrations with the development of these transverse programmes; and
- Assist, co-ordinate or facilitate individual departments and provincial administrations in the developing of special affirmative action measures needed to address specific forms of disadvantage that cut transversely across departments and administrations (Section: 4.3-4.7).

Furthermore, South Africa has parliamentary oversight and department monitoring regarding the implementation of affirmative action programs. The South African parliament reviews the progress of affirmative action in public service. Besides, national departments’ and provincial administrations have the duty of reporting to the Public Service Commission, the Department of Labour and the Portfolio Committee on the Public Service and Administration (Section: 4.9). These institutions are supposed to
monitor the progress and report to parliament on the effectiveness of the policies (Section: 4.10). In case of non-compliance, the Department of Labour and the Parliamentary Portfolio Committee on the Public Service and Administration have the authority to take action against defaulting departments and administrations (Section: 4.9).

Likewise, courts in South Africa have also addressed issues of affirmative action in a series of cases. One is the case of *Harmse v city of Cape Town* (2003) ZALC 53. In this case, *Harmse*, the applicant referred a dispute with his employer to the Labour Court claiming that he had been discriminated against in violation of section 6 of the Employment Equity Act 55 of 1998, which provides that no person may unfairly discriminate, directly or indirectly, against an employee in any employment policy or practice. The applicant further alleged that the employer unlawfully discriminated against him by failing, in considering his application for short listing, to apply Section 20 of the Act, which requires the designated employers to implement employment equity plans. The Court reached the decision that affirmative action was a right for an employee from a designated group (paragraph 33 and 44). If an employer fails to take affirmative action measures, then it may properly be said that the employer has violated the right of an employee who falls within the designated groups not to be unfairly discriminated against (paragraph 47). Affirmative action therefore, can found a basis for unfair discrimination cause of action for an employee, if an employer fails to promote the achievement of equality through taking affirmative action measures (Ibid). The Court justified this reasoning by stating that if affirmative action were not a right, it would leave employees who were unfairly discriminated against without a remedy if the employer failed to promote substantive equality in the workplace. This case suggested that an employee has an individual right to affirmative action.

The other is the case of *Dudley v City of Cape Town* (2004) 5 BLLR 413 (LC). In this case *Dudley*, a black woman, who applied for the position of Director in the City Health, was unsuccessful. Instead, a white male was appointed. In challenging this appointment, the applicant alleged that she had been unfairly discriminated against on the basis of race and/or sex in terms of Section 6 (1) of the EEA. She further contended that the
employer’s failure to appoint her constituted a breach of the employer’s affirmative action obligations in terms of the Employment Equity Act. The City of Cape Town opposed this allegation arguing that their failure to advantage a member of a designated group did not constitute unfair discrimination. The court makes a distinction between Chapter II and Chapter III of EEA (Paragraph 71-79). The Court held that Chapter II, which prohibits unfair discrimination, was directly enforceable by any aggrieved individual or group of employees. Chapter III, however, imposes obligations which only be implemented within the context of a collective environment. The Court held that designated employees, even though suitable for appointment to promotional posts, are not unfairly discriminated against merely because their employer happens to appoint a non-designated employee. Consequently, the Court held that an employee who complains of unfair discrimination must lodge a grievance at the Department of Labour and the Director-General of Labour must refers the dispute to the Labour Court (Paragraph 57). The Court accordingly held that the employee lacked locus standi to bring the application directly to the Labour Court (Paragraph 82). The Court therefore ruled that the Employment Equity Act did not establish an individual right to affirmative action; affirmative action is a group-based obligation and not an individual right.

The above described cases demonstrate that the Court in Dudley v City of Cape Town reached the opposite conclusion to the finding in Harmse v city of Cape Town. This shows that there is inconsistency in the interpretation of affirmative action measures in South African courts. In some instances, the judges have considered affirmative action measures as an individual right while in other instances, the judges have considered affirmative action measures as group-based obligation. These decisions show, among other things, the different understandings of the judges concerning the nature of affirmative action. The role of the courts has had important implications for affirmative action.

In sum, the history of South Africa has laid the foundation for affirmative action in the workplace and education sector. Needless to say, apartheid had an overwhelming effect on the social, economic, political and cultural life of black South Africans and women in particular. Looking at the history of discrimination, affirmative action becomes a
necessary means to level the playing fields in the education and working environments. It has been noted that after decades of segregationist policies non-discriminatory legislation per se is not enough. In the post-apartheid era affirmative action program is adopted to rectify prior discriminatory practices and promote the economic advancement of disadvantaged groups, notably blacks. Proper monitoring and evaluating systems are in place to ensure compliance with the laws regarding affirmative action programs.

3.4. Conclusion

The historical basis of affirmative action in the three case studies under review is characterized by three main systems of social stratification: slavery, a caste system and apartheid. Slavery in the US was a form of forced labour in which Africans were brought to America as slaves. The racism of the United States has been largely based on the institutionalization of slavery. Similarly, until 1994 South Africa was ruled by an apartheid system in which the government enforced a separation of races with its policy. This existed as a legal institution in which people are segregated along racial lines. Likewise, caste system or varna of India has had a different course altogether based on a stratified social hierarchy. Varna is a type of social structure which divides people on the basis of inherited social status for the distribution of functions in society. People from certain varna were ostracized.

Such historic inequalities and injustices have led to the adoption of affirmative action policies with the aim of protecting the previous disadvantaged, distributing equally the resources and eradicating the imbalances of the past. Although the contents of such policies differ in the three systems according to the socio-economic needs of the country, the basic commitments of quest for just and equal socio-political order remain the same. In brief, affirmative action in the US, India and South Africa historically evolved in similar ways. Recognition of the legacies of the past discrimination was followed by the implementation of remedial policies.

However, there are a number of differences among the three countries under study in implementing affirmative action. Firstly, in India and South Africa, affirmative action is
constitutionally mandated whereas there is an absence of such provision in the US Constitution. Secondly, the perpetrators of injustices under the caste system of India were their own people belonging to the same race while in the US and South Africa the perpetrators of injustices under the slave system and apartheid were from a different race. Thirdly, in India, affirmative action takes the form of reservations for Scheduled Tribes, Scheduled Castes and Other Backward Classes in government services, educational institutions and legislative bodies while in the US and South Africa, affirmative action plans include numerical goals and preferential treatment of disadvantaged groups in jobs and educational institutions. Finally, in the US, the rights protected by the Equal Protection Clause are individual and thus require the state to treat every person as an individual, not as a member of a class. The denial of individual rights on the basis of group characteristics such as gender, race, religion, national origin is, however, treated as the rights of an individual. Conversely, in India the Constitution provides for group rights in so far as it speaks of special provisions for women, Scheduled Castes, Scheduled Tribes and for any socially and educationally backward classes of citizens. It is used to provide justice for the groups by creating a quota or reservation to discriminated individuals of the excluded groups. The same applies to South Africa. Affirmative action is intended to protect group rights by benefiting individual members belonging to the same group.

On the basis of facts, it may be concluded that where a system is perceived to be unjust and discriminatory, affirmative action is seen as a legitimate tool of compensation to redress such past injustices. As has been demonstrated in this study, the genesis and evolution of affirmative action policies and programs in different socio-cultural contexts often resulted from a social environment characterized by injustices and oppressive practices in which the former becomes a practical tool to redress and benefit disadvantaged groups. However, given the institutionalized nature of such discriminatory practices, voluntary efforts per se to include the previously excluded are insufficient and remain more of a matter of discretion for authorities than a policy issue for implementation. Affirmative action programs, therefore, intends to provide opportunities for previously excluded segments of society in order to achieve equitable socio-economic distribution and participatory political life.
The above described cases have demonstrated that although Ethiopia belongs to a different cultural and political setting, it can be compared and contrasted, because these societies had experienced unbearable system of patriarchy which necessitated a fundamental change. It can also be conceptualized that countries with such oppressive systems are very likely to come up with progressive and meaningful affirmative action policies in order to remedy the past than countries with semi-liberated or mild political systems. These countries introduced affirmative action policies as a consequence of the magnitude and level of oppression. Although there was no structured discriminatory rigid system as that of USA, India and South Africa, Ethiopia is a traditionally patriarchal society whose systems and cultures oppress women which generate a need for affirmative action programs. The next chapter discusses the position of women in Ethiopia, in a historical perspective.
Chapter 4

4. Description of the Case Studies and Status of Women in Ethiopia

This chapter starts by briefly describing the study area followed by an overview of women’s position in Ethiopia. It reviews gender relations in a historical perspective and examines the influence of the past in contemporary political systems as far as women’s position is concerned. In particular, the focus of the study is from the introduction of a written constitution under the imperial regime in 1930 to the present. The chapter also identifies the major factors that affect women educational attainment and employment opportunities with special emphasis on the socio-cultural, politico-economical and legal barriers to women’s participation.

4.1 Description of the case studies

Ethiopia is an East African country bordered by Eritrea to the north, Kenya to the south, Djibouti and Somalia to the east, as well as Sudan and South Sudan to the west. Ethiopia is the second-most populous country, after Nigeria, on the African continent with around 90,000,000 inhabitants. Ethiopia has a total area of 1,127,127 square kilometers (CIA Fact book: 2013). The capital of Ethiopia, Addis Ababa, is the largest city located in the heart of Ethiopia, serving as the headquarters of the African Union. Ethiopia was the only African country beside Liberia that was never colonized during the era of “the scramble for Africa”; which derives many African nations to adopt the colors of Ethiopia’s flag when they gained independence after World War II. In addition to serving
as the seat of African Union, Addis Ababa has become the location of several United Nations and other global institutions that have focus in Africa.

Ethiopia’s economy is based on agriculture which accounts for 41% of GDP and 85% of total employment (Ibid). According to the International Monetary Fund (IMF), Ethiopia was amongst the few countries that have registered fastest growing economies in the world since 2004. In spite of this fast growth in recent years, GDP per capita is one of the lowest in the world, $1,200 (Ibid). The death rate was estimated at 10.79 deaths per 1,000 people, and the birth rate was 38.5 births per 1,000 people (Ibid). According to a World Bank report published in 2012, 55.81 percent of the population is between the ages of 15 to 64, and only 16.7 percent of the population lives in urban areas.

Ethiopia is home to diverse cultures and ethnic groups with as many as eighty languages; their diversity further signifies their distinctiveness in terms of culture, belief, language and way of life. Based on the 2007 Census conducted by the Central Statistical Agency of Ethiopia (CSA), the population of Ethiopia is around 90 million with 50.3% women and around 49.7% male. Despite ethnic, religious and cultural diversity, attitudes towards women remain relatively similar particularly in the rural societies. That is to say, women are disadvantaged in terms of various socio-economic variables across the different ethnic as well as religious groups. Women across the country suffer from high illiteracy rate, access fewer opportunities for education and employment thereby subjected to physical hardship throughout their lives. Many of the ethnic groups in the country are yet practicing harmful traditional practices against women. Despite the socio-cultural variations across different identity groups in the country, women’s role particularly in rural Ethiopia is assumed only as a wife and mother.

4.1.1 The Federal Government of Ethiopia

Since the emergence of modern Ethiopia during the era of Menelik II\(^{16}\), the country had a century-old tradition of unitary and centralized rule. Soon after Emperor Menelik

\(^{16}\) Menelik II was Emperor of Ethiopia from 1889-1913.
incorporated the western, eastern and southern parts of the territories that constitute contemporary Ethiopia, successive regimes both imperial and military regimes had administered the country in a highly centralized unitary fashion until the introduction of a federal administrative structure in the mid-1990s under the current regime. In the aftermath of the fall of the military regime in 1991, the Ethiopian People's Revolutionary Democratic Front (EPRDF)\(^{17}\)-led transitional government had drafted a Transitional Charter of Ethiopia in 1991 that guaranteed the rights of “Nations, Nationalities and Peoples of Ethiopia to self-determination”, which in turn paved the way for a decentralization of power (Negarit Gazetta 22 July 1991:2). Sooner, National/Regional Self-Government Establishment Proclamation No.7/1992 was passed that resulted in the birth of 14 National/Regional self-governments. In 1995 Ethiopia has adopted a new constitution that established the Federal Democratic Republic of Ethiopia (FDRE) comprising of nine ethno-linguistically divided regional states\(^{18}\) and two chartered federal cities. \(^{19}\) As the nature and scope of the distribution of power between the federal and regional governments vary between the two levels of government, both have parallel legislative, executive and judicial powers. The FDRE constitution accords regional states residual power, wherein all powers not expressly assigned to the federal government or concurrently to the Federal government and the States are reserved for the States (FDRE Constitution 1995: Article 52 (1)). Apparently, both the federal and state institutions are responsible for facilitating the overall socio-economic and political transformation of the country.

\(^{17}\) The Ethiopian People's Revolutionary Democratic Front (EPRDF) is the ruling political coalition in Ethiopia since 1991 up to present day. EPRDF that was established in 1989 comprises of four ethnic-based political organizations namely: Tigray People’s Liberation Front (founded in 1975), Amhara National Democratic Movement (founded in 1982), Oromo People’s Democratic Organization (founded in 1990) and Southern Ethiopia Peoples Democratic Movement (founded in 1992).

\(^{18}\) The Constitution Federal Democratic Republic of Ethiopia Proclamation No. 1, 1995, Article 47(1) lists the following nine regions: the State of Tigray, the State of Afar, the State of Amhara, the State of Oromio, the State of Somalia, the State of Benshangul/Gumuz, the State of the Southern Nations, Nationalities and Peoples, the State of Gambella and the State of Harari People.

\(^{19}\) Chartered cities have a full measure of self government defined by the city’s own charter. The city of Addis Abeba and Dire Dawa are organized as the two chartered cities.
4.1.2 The Afar Regional State

As mentioned above, under the current federal administrative structure of Ethiopia, there are nine ethno-linguistically divided regional states and two chartered cities. The Afar State is among these nine member states within the federation. The Afar State, which is a homeland to the Afar people with a new capital Samara is located in northeast of Ethiopia. The Afar lowlands stretch from the Awash River (225 km east of the Ethiopian capital Addis Ababa) in the south, to the borders adjacent to Eritrea and Djibouti in the north. With an estimated area of over 100,000 km², the region comprises five Zonal administrations and 32 Districts. Based on the 2007 Census conducted by the Central Statistical Agency of Ethiopia (CSA), the total population of the Afar regional state is estimated at about 1,390,273 out of which 775,117 are men and 615,156 are women. The urban communities in Afar region account for 188,135 or 13.4% while 409,123 or 29.4% were pastoralists (CSA; 2008:34). This region is characterized by hot climatic conditions with low and irregular rainfall. The Afars predominant inhabitants of the region are mainly pastoralists that adopt seasonal movements in search of water and pasture land in order to survive the harsh and inhospitable weather conditions. There are also agro-pastoralists in the Afar region who depend entirely on the Awash River basin.

Nevertheless, the Afar region remains one of the most economically neglected regions in Ethiopia due to various inter-related factors. Apart from the marginalization of the Afar people who were partitioned into five administrative provinces within the country, ill-conceived development projects in the Afar area during the consecutive regimes have failed to help improve the socio-economic wellbeing of the society. There are still only three high schools in the entire region which are located in government owned large scale agricultural plantation areas where the number of immigrant workers and their families widely outnumber the local Afars (APDA, 2009).

Although a relatively significant development endeavour has been undertaken in the Afar region since the establishment of the federal regional states in Ethiopia, the Afar women still face huge disadvantages in many aspects. They are burdened with extensive activities ranging from domestic works to the construction of a temporary Afar house,
They are victims of a harsh environment and harmful traditional practices including female genital mutilation and a forced marriage. Nowadays, Afar women are so severely affected by HIV/AIDS epidemic as well as poor access to education this in turn has influenced the status of women in the politico-economic sphere of the region (Ibid).

4.1.3 The Tigray Regional State

The Tigray Regional State, located in the Northern part of Ethiopia, constitutes one of the nine regional states of the Ethiopian Federation. The Tigray region covers an area of 50,000 km² and divided in six Zonal administrative divisions and 35 Districts (http://www.ethiopia.gov.et/English/Information/Pages/StateTigray.aspx). Based on the 2007 Census conducted by the Central Statistical Agency of Ethiopia (CSA), the Tigray Region has an estimated total population of 4,314,456, of which 2,124,853 are men and 2,189,603 women (CSA, 2008:34). The urban inhabitants number 842,723 or 19.53% of the total population. In addition to the patriarchal nature of the Tigray culture, significant influence of religion against women’s advancement has inhibited the progress of women in the society (Hammond, 1999). Tigray women were also particularly disadvantaged due to recurrent drought, famine and wars. Losing the breadwinners for their families in the ongoing battles shouldered the Tigray women the burden of performing ‘men’s roles’.

As is the case for all women of rural Ethiopia, Tigray women are entirely burdened with domestic work; although some may help their husbands in the farm field. Apart from very limited access to schools during the imperial and the military regimes, Tigrean girls were not traditionally expected to attend school after elementary level. Eventhough the participation of women in the armed struggle of the Tigray People's Liberation Front (TPLF) helped to change societal attitudes and relatively enhanced women’s involvement in politics, the overall socio-cultural and politico-economical transformation of both urban and rural Tigrean women still remains low. Similar to women all over Ethiopia, Tigrean women today still face chains of problems such as low rate of literacy, high rate of family dissolution and widowhood, highly exposed to unwanted pregnancy and pandemic diseases like HIV/AIDS.
4.2 Women’s position in Ethiopia: Historical Context

Rita Pankhurst (1995) reminds us all about women’s position in the history of Ethiopia, “Lucy\textsuperscript{20}, alias Dinknesh - literally "you are lovely" - is the first woman in Ethiopian history, indeed in the history of the world.” Ethiopia has a long recorded history of women’s significant role on the overall socio-economic and politico-military developments of the country. The legendary Queen Sheba of the Axumite kingdom; the founder of the Zagwe dynasty, Queen Yodit; and Empress Eleni, who had, exerted political influence for over half-a-century in the 15\textsuperscript{th} Century Ethiopian politics were few among the prominent women personalities in Ethiopian history. Moreover, the brave warrior Dele-Wan-Bara, the daughter of Imam Mahfuz, governor of Zayla and wife of the ruler of the Adal kingdom, nicknamed ‘Ahmed Gragn’; the 18\textsuperscript{th} Century great Empress Mentewab who was regent at the Gondar palace for over three decades; Empress Taytu Betul, a strong and the strategist wife of Emperor Menelik II, were also among those women who hold a remarkable place in the history of Ethiopia. Nevertheless, their significant contribution in all spheres of the country’s affairs could not match with the general women’s status in then and today’s Ethiopia.

4.2.1 Women’s organizations

\textsuperscript{20} Lucy (\textit{Australopithecus afarensis}), primitive hominids estimated to have lived about 3.2 million years ago are discovered in 1974 at Hadar along the Awash Valley Basin in Afar Depression of Ethiopia. The four Americans and seven French participants in the expedition team that discovered the skeleton of the earliest human origin, gathered on the evening of 24 November 1974 to celebrate the success at their camp and nicknamed the skeleton as Lucy, after the Beatles song "Lucy in the Sky with Diamonds", which was being played repeatedly on a tape recorder. Lucy also has been given a second name, meaning \textit{Dinkeneshe}, meaning "you are amazing" in Amharic.
Women’s active involvement in Ethiopian modern politics can be traced back to over half-a-century although hardly with any clear-cut policies and principles concerning their participation. During the imperial regime, there had existed various non-governmental organizations which were managed by women believed to have had some gender related practices. The Ethiopian Women’s Volunteer Service Association (EWVSA), which was formed during the Italo-Ethiopian War in 1935, was the first nationwide association launched by some women members of the nobility. The primary goal of this organization was to create a favorable environment for aid from the International Red Cross Association during the 1935-41 Italian invasion of Ethiopia. Originally, it was established for supporting resistance fighters against the Italian occupation by supplying provisions and food for the resistance fighters. After the war, the focus of the association shifted mainly to training young women in handicrafts, cooking, secretarial work etc (Zenebework; 1976:49). By looking at the training activities given to women at the time, one could contend that EWVSA has rather reinforced the existing order of patriarchy by confining women just to cooking and handicrafts which were already designated traditional jobs for them. Moreover, the entire activities of EWVSA have focused exclusively on the interests of urban women particularly those in the capital, Addis Ababa with little consideration to the majority of rural women.

The Armed Forces Wives Association (AFWA) was another association that was organized in the 1950s by one of the then prominent women activists, Sendu Gebru21 to support widows and children of the resistant fighters following the Italo-Ethiopian war. AFWA was originally established as a welfare organization with limited scope of protecting only the wellbeing of particular group of women and children whose spouses and fathers were in the battlefield. Though assisting women and children in the absence of the men who are breadwinners for a family during wartimes have had positive roles in the society, the organization had neither the capacity to involve the majority of the Ethiopian women nor had it any impact on gender policies, laws and programs. Later, the

21 Sendu Gebru was an author, activist, patriot and the first Ethiopian woman parliamentarian. She was also the first Ethiopian school directress of Etege Menen School where she has done a remarkable job in promoting girls education.
Ethiopian Young Women’s Christian Association (EYWCA) that was established in the 1960s was mainly engaged in voluntary and charity oriented activities without a much contributing role in driving the gender problem into the national scene (Paulos, 2011: 230).

Following the expulsion of the Italians, the EWVSA that was dissolved in 1936 was re-established and renamed as the Ethiopian Women Welfare Association (EWWA). It was originally founded in 1931 by Empress Menen and was led by the eldest daughter of the Emperor, Princess Tenagnework till its dissolution in 1974 when the military regime came to power. The organization, as its predecessors, was set up to help the poor, widows, and victims of Italo-Ethiopia war. It was focused on education and training of women either with handicrafts and better child-care roles. In order to perform its activities, the association established schools, clinics and orphanages for the poor with branches in various cities. EWWA had 40 branches in various cities throughout the country and administered by local people and local funds. The organization focused on bringing back women into their prior position after the end of the war.

In general, the women’s institutions activity in the 1950’s focused on addressing practical needs of women. They undertook various income-raising activities and ran programs such as maternal and childcare services, vocational training schools for women, orphanages and income generating activities for women of low-income groups (Abebech, 1983: 27). It has also been reported that the first lottery venture in Ethiopia was launched by women’s organizations, which was later confiscated by the military regime in 1974. Proceeds from the lotteries helped to address women’s needs and support the work of the organization. In essence, these clearly demonstrate that the associations have focused on reinforcing the relegated role of women focused reaching on their immediate needs with no emphasis for long term and sustainable remedies for their deep-rooted challenges.

Following the 1974 Revolution, which brought the military regime to power, the issue of women in the society had to be brought to the public forum as the new leaders declared...
themselves as ‘emancipators’. The Commission for Organizing the Party of the Working People of Ethiopia (COPWE), which was established in the mid 1970’s by the military regime, dissolved the various women’s organizations that had been operational before the revolution and instead organized the scattered women’s associations at a national level. Accordingly, Proclamation No, 138 launched the birth of the Revolutionary Ethiopian Women’s Association (REWA) in 1980 with a principal target of ensuring the rights of women. Subsequent to the formation of the organization, the women’s national congress of September 12, 1980, held in Addis Ababa, was the first meeting of its kind in Ethiopia that brought together approximately 857 women delegates from all administrative regions, provinces and districts of the country (REWA Report,1987). The participants argued that women’s problem were less likely to be taken seriously during the imperial regime and hence agreed to struggle together for women’s rights in all spheres of life (Ibid). Shortly, REWA had established women’s branch associations at various administrative levels and structures: at the provincial, zonal, district and neighborhood association levels. Accordingly, REWA started launching different activities for women under a strict guidance of the COPWE and later of the Workers Party of Ethiopia (WPE).

In principle, REWA had two major objectives. One was to create an enabling environment for women to exercise their rights and discharge their responsibilities as mothers, workers and citizens. The second was to emancipate women from economic dependence and involve them in the newly established socialist institutions as independent producers alongside men (Ibid: 15). The Association had engaged in numerous activities and indeed brought the issue of women’s rights agenda to the forefront. The association was involved in activities of socio-economic nature, in the elimination of harmful traditional practices against women, in organizing programs to enable women to be represented in various committees, in facilitating training opportunities for women abroad; in organizing and conducting awareness raising campaigns for women’s rights; in opening a number of income-generating enterprises and solving the problem related to unemployment. For instance, in 1987, the total number

23 It had one central Council,16 regional level associations,111 Provincial level associations,584 district level associations, 21,058 basic( primary level) associations both in the rural and urban areas and 453 working women’s Committees set up in factories, enterprise and different government offices.
of women in the Ethiopian Trade Union had reached 23.7% and in the trade union leadership, women hold 12.7% (Ibid: 17). Women’s employment in the civil service has also risen. In 1988, from the total of 200,369 permanent civil servants, 46,234 were women. Since its establishment in 1980, REWA had also participated in a number of international conferences, seminars and workshops, which dealt with the integration of women into the national development process (Ibid: 16). According to the REWA, a broad consensus seems to have been reached on the indispensable role of women, who comprise about one half of the population in the country’s overall socio-economic and political transformations. Thus, the slogan “the revolution would not be successful without women’s participation” became very popular. Furthermore, in the political spheres, the WPE has set up Women’s Affairs Division at the level of the Party’s Central Committee with branches throughout the administrative structures of the country. One could argue that the military regime instrumentalized REWA to channel its policies and extend its control from top to bottom. Nevertheless, the status of women during the military regime was in a relatively more progressive position than the imperial era. Women’s associations have changed the composition of their leadership from a few nobilities to that of the mass representatives and broadened their focus upon the rural communities. Likewise scopes of operations have been widened considerably from short term socio-economic needs towards women’s political participation.

After coming to power of the Ethiopian People’s Revolutionary Democratic Front (EPRDF) in 1991, further measures have been taken by the government in order to promote gender equality in the political, legal and socio-economic spheres. In 1992, a Women's Affairs Office was created within the Prime Minister's Office responsible for coordination and monitoring of Women's Affairs activities at a National level thereby creating conducive environment for the implementation of policy at various levels and in different sectors. In 1993, the National Policy on Women was passed which primarily aimed at “institutionalizing the political, economical and social rights of women by creating appropriate structures in government offices and institutions so that the public policies and interventions are gender-sensitive and can ensure equitable development for all Ethiopian men and women”. Similarly, Women’s Affairs Bureaus were established at federal, regional and Woreda (district) levels to implement the Women’s Policy and
monitor various activities undertaken at regional level. They also identify areas of concern based on the needs and priorities of each region. Likewise, a Women’s Affairs Committee was set up in the Council of People’s Representatives entrusted with the role of scrutinizing and checking for gender sensitivity in proclamations and laws before their promulgation. At the sector level, there are Women's departments in the various ministries and commissions of the federal and regional governments to deal with the issues of women based on the duties and responsibilities of the respective ministries. Meanwhile, the Women’s Affairs Office has been re-established as a full-fledged Ministry in October 2005. The Ministry of Women’s Affairs is mandated with the duties and responsibilities of ensuring participation and empowerment of women in political, economical, social and cultural matters. The Ministry is further empowered to monitor and coordinate the activities of Women’s Affairs Bureaus branched out at a federal and regional government level.

Subsequently, a series of legislative and institutional reforms were initiated and implemented through education, employment, advancement of women in positions of power and decision making, pension payments for deceased women civil servants to their heirs, right to equality in matrimonial relations and etc. Likewise, the establishment of non-governmental organizations and professional associations has played a significant role in bringing changes in the lives of women and make them active participants of the development process. To mention, the Ethiopian Women’s Lawyers Association, the Women Educationalist Association, the Association of Women’s Networking etc. could be cited as examples. The legislature has shown its commitment to redressing the gender imbalances.

4.2.2 Women’s position in Education

The limited participation of Ethiopian women in education can be largely explained by reference to the historical development of education. Originally, education was

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24 In 2010, the Ministry of Women’s Affairs was reorganized and renamed as the Ministry of Women, Children and Youth Affairs. See the Proclamation to provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia No. 691/2010.
predominantly religious and ran by churches and mosques. As noted by Teshome (1979:10) traditionally, the educational system in Ethiopia was predominantly religious-oriented, which was mainly targeted to serve the human resource requirements of religious institutions and the state. Moreover, in its long history of existence, church education has served as the main source of civil servants such as judges, governors, scribes, treasures and general administrators (Ibid: 11). At the same time, mosques in the Muslim areas had a parallel function in running ordinary schools in Ethiopia. But unlike the church schools, the koranic schools were maintained by the local committees themselves and received no state assistance of any kind (Markakis, 1994: 226). Since women were not allowed to assume responsibilities in these institutions, they were excluded from any teaching activities (Teshome, 1979:12). At the end of the 19th century, it was reported that there was nearly 90 percent illiteracy in the country and women’s situation was worse. However, some prominent women who managed to climb to the social and political ladder of the gender hierarchy like Empress Taitu, Tsehai Darge, and W/ro Ekuletaw Askal of Gojam were able to study “Kene”, a traditional church education. Nevertheless, influenced by traditional attitudes and beliefs, the introduction of modern education in Ethiopia often favored and followed the patriarchal system based on male domination which explicitly recognized women as dependant (Gobat, 1986: 45). The above description demonstrates that Ethiopia has a long history of didactic education provided almost exclusively to men.

Emperor Menelik II (1889-1913), who had recognized the need for modern education, took the first initiative to open Menelik Junior Secondary School in 1908 in Addis Ababa, although he had already started a modern school within the palace as early as 1905, primarily for the sons of the nobility (Ibid: 28). The Emperor was believed to have issued a proclamation in 1898 encouraging the people to give greater emphasis for modern education. One of his remarkable statements in his proclamation was for parents to send their children, both boys and girls, to schools after the age of six (Ibid: 29). In spite of such efforts, the education of girls lagged far behind for many years due to lack of societal attitudinal changes towards girls’ education. The opening of the first girls’ school in Addis Ababa in 1931 by Empress Menen, however, marked the commencement of the provision of modern education for girls in Ethiopia regardless of the opposition by
the public towards women’s education. There were only eighty female students in the school in 1935 (Astede, 1988:15-16). Nevertheless, the introduction of modern education that had just begun to emerge was disrupted by the Italian occupation (1936-1941). Most government schools were shut down and used for military purposes (Ibid). Meanwhile, after the restoration of independence in 1941, Emperor Haile Selasse resumed to expand modern education in different parts of the country considering it as a basic instrument for his modernization project. As Richard Pankhurst (1962: 256) noted, upon the Emperor’s return to the capital, the Emperor stated: “We need educated people in order to ensure our peace, to reconstruct our country and to enable it to exist as a great nation in the face of European powers.” Notwithstanding the Emperor’s Declaration, women’s participation was still very low though some women joined the newly introduced modern education.

Accordingly, the enrollment of girls and young women has increased in the then newly opened schools, Empress Menen Junior Secondary School and Handicraft School for girls, which were opened in 1941 and 1942 respectively in Addis Ababa. This has improved the overall enrollment of girls from 8.7 percent in 1946/47 to 12.4 percent in 1950/51 (Annual Abstract Statistics, 1962:19). However, as new schools were opened mostly in the capital city, Addis Ababa, women in the rural areas did not benefit from the expansion of modern schools in the country. At that time, Ethiopia’s overall literacy rate remained very low. There was low-level of educational enrollment and high gender disparity. The participation of girls was not only lower than that of boys, but also decreased drastically as one moves up the ladder of rank in educational hierarchy and particularly in the male-dominated fields of specialization such as engineering and medicine. From the 1967 to the 1970 school years, girls constituted 31 percent of the primary, 27 percent of the junior secondary and 20 percent of the senior secondary school students, while at the university level they constituted only 8 percent of the total student population (Ministry of Education Annual Abstract Statistics, 1962: 32).

Later, after the revolution of 1974, various steps have been taken to increase women’s enrollment in education. Particularly, many primary and secondary schools were opened at different places. Moreover, the launching of the National Literacy Campaign in the late
1970s, with the ultimate goal of widespread literacy, has also contributed to the expansion of education during the military regime. This has increased enrollment rates both in urban and rural areas, as well as a decrease in illiteracy rates. National data show that the illiteracy ratio has decreased to 34.6 percent in 1987 (Ministry of Education Annual Abstract Statistics, 1989: 22). In the meantime, societal attitudes towards women’s education began to change. More specifically, the campaign for equal rights worldwide during the 1970s has had greater influence on societal perception. The establishment of women’s organizations and women’s units in the civil service also brought the issue of women’s rights on the agenda. In addition, the awareness level has increased among the society for the elimination of harmful traditional practices and for the equal enjoyment of rights by women, where parents start to send their girls to school which led to the decrease of illiteracy rate among women.

Since 1991, after the introduction of a federal government structure, regional and local governments are empowered to manage the delivery of social services such as education as their own affairs in which educational opportunities have been expanded throughout the country. Alongside, the government has developed the Education and Training policy in 1994 and launched the Education Sector Development Program (ESDP), with a focus on the comprehensive development of education. ESDP I for the period (1996/1997-2002/2003), ESDP II for the period (2002/2003- 2005/2006), ESDP III for the period (2005/2006-2010/2011) and ESDP IV for the period (2010/2011-2014/2015) intends to improve quality of education, expand access with special emphasis on primary education in rural areas as well as the promotion of education for girls (MOE: 2012). These programs were specifically formulated with different goals of gender equity to increase women enrollment ratio and reform the curricula to make it gender sensitive. The Programs have, among other things, the aim of increasing the share of women’s enrollment in education especially in the rural areas. In particular, ESDP I was intended to emphasize on access, quality, efficiency and equity in education (ESDP I: 1996).

Similarly, the Program Action Plan of ESDP II has emphasized in its strategy to change the attitudes in educating women by creating awareness campaigns and trainings for concerned bodies and encouraging women to join non-traditional fields and to continue
the application of affirmative action for more female students to be able to join higher institutions (ESDP II: 2002).

Likewise, ESDP III has focused on improving the participation of females in education through providing and strengthening counseling services, gender trainings, tutorial services and capacity building programs for women leaders (ESDP III: 2005).

The goal for gender equality under ESDP IV is to promote equal access and success in education and training for women and girls. The programs, among other things, intend to establish and strengthen women education forums, gender mainstreaming, girl students’ clubs at all levels of education and monitor the implementation of affirmative action programs by creating strong work relationships with appropriate bodies and develop the sexual harassment policy at all higher education institutions (ESDP IV: 2010). The ultimate goal of the ESDP is to achieve universal coverage in primary education by the year 2015.

In Ethiopia, the Ministry of Education (MOE) is the federal institution mandated to formulate the educational policy, reform the curriculum and supervise the educational standards. It also prepares national examinations and establishes higher education institutions. In the past, general education was divided into primary (grade 1-6), junior secondary (grade 7 and 8), and senior secondary (grade 9-12), with national examinations given on completion of each level. In 2003, the educational system was re-organized in a new cycle. According to the new cycle of the MOE, primary education is divided into two cycles comprising of basic education (grade 1-4) and second cycle of general primary education (grade 5-8). At the end of grade 4 and 8, pupils take a national exam. The first cycle of secondary education is followed by two years of general secondary education (grades 9-10). Upon the completion of grade 10th, students take the Ethiopian General Secondary Education Certificate Examination (EGSECE). This exam helps to determine whether students enter the Preparatory stream or pursue a career in the Technical and Vocational Education and Training (TVET) track. On successfully completed EGSECE, pupils can opt to attend the two years second cycle of upper secondary education (11th and 12th grade preparatory school) or pursue a career in the TVET depending on their
achievement on their qualifying exam. Higher education is taken to include a three, four or more years of undergraduate programs and postgraduate education programs of masters and PhD. The tertiary level education is provided in regular, evening, distance and summer programs (Educational Statistic Annual Abstract, 2003).

Although the general literacy rate for women is much lower than for men, there has been considerable improvement in girl’s enrollment at all levels of education. The Gross Enrollment Rate (GER)\(^{25}\) has seen a steady increase since 2001 (Educational Statistic Annual Abstract, 2003). As mentioned above, support for primary education has been a priority through ESDP in which students in primary schools increased from 7.4 million in 2000/01 to 9.5 million in 2004/05 with the GER rising from 61% to 79% whereas, the number of students increased from 780,636 in 2003/04 to 942,578 in 2004/05 taking the GER from 22.1% to 27% (MOE, Educational Statistic Annual Abstract: 2006/07).

Likewise, primary education had increased in enrollment for five years averaging 4.5% since 2006/07 (Educational Statistic Annual Abstract, 2006/07). GER has increased by 3.0 percentage points from the year 2009/10 ((Educational Statistic Annual Abstract, 2009/10). Although there is an incremental increase in Primary GER among female students while there remains a gender gap in terms of enrollment of boys and girls. For 2010/11, the GER at national level is 96.4%, which shows an increase in GER from 2009/10 (Educational Statistic Annual Abstract, 2010/11). In general, when compared to the previous academic years, such enrollment rate is quite an achievement especially for girls in the Ethiopian education system.

While enrollment in all secondary schools (Grades 9-12) has grown by over 17.8 % per year, reaching almost 1.5 million students in 2007-08, but in the first cycle the rates for boys continued to predominate the rate of girls (Educational Statistic Annual Abstract, 2007/08). It has been noted that the total number of students enrolled in grades 11 and 12 (preparatory grades) in 2007/08 was 193,444, out of which 32.5% were girls (Ibid). When compared to that of 2003/04, the enrollment at these grades level showed an average annual increase of 19.6% (Educational Statistic Annual Abstract, 2007/08). The

\(^{25}\) Gross Enrollment Rate is the percentage of total enrollment in primary schools, irrespective of age.
total number of students enrolled in grades 11 and 12 (preparatory grades) in 2008/09 were 205,260 out of which 27.6% were girls (MOE, Educational Statistic Annual Abstract: 2007/08). However, in both cycles, the average annual growth rate is higher for girls than boys (MOE, Educational Statistic Annual Abstract: 2007/08). It has been noted that, the total number of students enrolled in grades 11 and 12 (preparatory grades) in 2010/11 is 288,216 out of which 41.1% are girls (Educational Statistic Annual Abstract, 2010/11). When compared to 2006/07, the enrollment at this grade level showed an average annual growth of 13.2% (Educational Statistic Annual Abstract, 2010/11). In 2010/11, the GER for the preparatory program is 9.4 % and 6.7 % for boys and girls respectively (Educational Statistic Annual Abstract, 2010/11). Overall, the secondary enrollment rate has increased but the rate for boys is still greater than that of girls.

Moreover, examining the gender proportionality at the tertiary level at both undergraduate and postgraduate levels, the share of women becomes very small as one goes up higher in the rank. For instance, from the total enrollment of 173,901 students in undergraduate degree programs in 2005/06 academic year, only 43,066 were women (Educational Statistic Annual Abstract, 2005/06). Postgraduate enrollment includes all programs after the first degree typically the masters and PhD levels. Enrollment in postgraduate programs is still very small with the percentage of female students at any other level of education. For instance, in 2005/06 women’s share in postgraduate master’s degree program was only 9.9% while 5.2% constitutes their share in the Ph.D. program offered in the country (Ibid). Similarly, in 2010/11, the percentage of female is 13.8% which is very small when compared to other sectors of education (Ibid: 2010/11). Graduates from Higher Education institutions typically complete one of three degree streams, Undergraduate, Postgraduate Masters, or Postgraduate Ph.D. In 2007/08, there were 47,979 graduates from Undergraduate degree of which 9,931 were female (Ibid: 2009/10). Similarly, in 2007/08, from the total of 2,664 graduates from Postgraduate degree, only 284 were female (Ibid). This represents the low level of female participation in both Undergraduate and Postgraduate programs. Likewise, in 2010/11, from the total of 81,598 graduates from the three programs, 21,464 were female graduates (Ibid: 2010/11). More specifically, there were 20,565 female graduates from Undergraduate program and 899 female graduates from Postgraduate degree (Ibid). Although there is an
increase in the number of female graduates in the past few years, the number is still small.

Overall, women's participation in higher education has steadily increased though their percentage still remains smaller than at any other level of education. For instance, from 1995 to 2006, it rose from 18.5% to 42.3% (Educational Statistic Annual Abstract, 2006/07). Particularly, the participation of women in Higher Learning Institutions (HLIs) has been steadily increasing since the year 2005. Asmaru Berihun, Head of Gender and Educational Equity Department in the Ministry of Education, at an interview with the Ethiopian News Agency in 2009 indicated that the total undergraduate enrollment of students in both government and private institutions in the year 2004 was 98,404 out of which 20,418 were women. In 2008, the number of women students rose to 63,317. This figure clearly demonstrates the constant rise of the number of women students. Asmaru Berihun further noted that the number of women students in post graduate programs was only 172 before 2004 and this number has attained 703 in 2008 that accounts 9.6 percent (Ethiopian News Agency, 2009). This shows progress in the participation of women in undergraduate and postgraduate programs. In this regard, the expansion of higher learning institutions constitutes one of the main factors for the increment of student’s enrollment in general and women in particular. Moreover, awareness creation, training campaigns and the establishment of gender offices in higher education have also contributed for the accretion.

In short, the overall enrollment of students in general and women in particular show steady increase for the last decade. Yet, the gender gap still persists in all levels of education especially at the tertiary level of higher education. As it is widely known, there is a strong link between educational achievement and employment opportunities in the labor market. In other words, the low enrollment of women in education will have a negative impact on their opportunities in employment. Needless to say, limited participation in education deters women from entering the labour market extensively. Below, the position of women in employment will be examined.
4.2.3 Women’s position in Employment

The genesis of Modern Administration of the European style in Ethiopia dates back to 1907 when Menelik II initiated the formation of the first cabinet of Ministers. He then established nine ministries: Ministry of War, Ministry of Justice, Ministry of Pen, Ministry of Finance, Ministry of Commerce and Industry, Ministry of Foreign Affairs, Ministry of Agriculture, Ministry of Education and Fine Arts and Ministry of the Imperial Court (Bahiru, 2002:112) During that time and in the subsequent years, the public administration lacked specific personnel rules and regulations. Nevertheless, in the early 1960s, Emperor Haile Sellassie undertook institutionalization and restructuring measures in the sphere of public administration to govern the sector by clearly defined rules and regulations. In this regard, the role of enlightened Ethiopians in pressurizing the system to have good administration as well as the attempted coup d’etat\(^26\) have made a significant contribution in the establishment of the new system of administration (Merit: 60). Subsequently, after issuance of the Public Services Order No. 23/1961, the Central Personnel Agency was established with the duties and responsibilities of setting a homogeneous public service. This landmark event made structural and functional change in the civil service (Ibid: 59). Article 9 (1) of Order No. 23, 1961 reads as follows:

> The Agency shall be responsible for recruitment of classified and unclassified Public Servants and may conduct such open competitive examinations, interviews or other tests for admission to the service and will fairly test the relative capacity and fitness of the persons examined for the position to be filled.

The aforementioned provision clearly manifested that vacancies would be open to the general public and individuals are appointed through examinations and interviews. It

\(^{26}\) On December 13, 1960 while the emperor was abroad an attempted coup d’etat was launched to achieve social and political change in the country. The revolt was led by the commander of the Imperial Bodyguard Mengistu Neway, his brother Girmame Neway, a few security officials and intellectuals. Although the coup was initially successful in the capital, it later failed to achieve popular support.
states that recruitment to a position shall be made only according to merit and fitness to
be determined as far as practicable by competitive examination.

Although the Central Personnel Agency does not allow any preferential treatment in the
selection process of job applicants, there have been changes in employment opportunities
for women. The fact that women tended to start to work in manufacturing industries
meant that women employment rates have increased. For instance, in 1951, there were
only 587 women employees and the number has risen to 1,138 in 1954 (Pankhurst, 1957:98).

During the military regime (1974-1991) the civil service was reorganized and
restructured in line with the socialist system of the new government and renamed as
Public Service Commission.

Since the mid-1990s, Ethiopia has been implementing new structures in its public service
to accommodate the new policy of decentralization. Accordingly, in 1995, the Federal
Civil Service Commission (FCSC) was re-established and in 2006 re-named as the
Federal Civil Service Agency (FCSA)27. FSCA is responsible in all matters related to
civil servants recruitment, selection, promotion, transfer, salary increment, position
classification, salary scale and exclusive rights to issue regulations to federal civil service
institutions, after approval by the council of ministers.

At the regional level, the civil service bureaus have similar powers in their respective
states. The government further introduced the Civil Service Reform Program to bring
significant improvements in the management and performance of the civil service, among
other things, amendment of the legal framework, standardizing structures and processes
and training staff.

27 The Federal Civil Service Commission (FCSC) was reestablished by Proclamation No. 8/ 1995 and later
renamed as the Federal Civil Service Agency (FCSA) by Proclamation No. 471/2006. In 2010, the Federal
Civil Service Agency was reorganized and renamed as the Ministry of Civil Service. See a Proclamation to
provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic
Despite women’s contribution to the overall economic development through both remunerated economic and unpaid domestic activities, they have had limited access to employment opportunities in comparison with men. This is due to their limited access to education and vocational training. In particular, their lower educational attainment has direct impact in accessing to formal sector jobs, which ultimately caused the concentration of women in low paid production jobs with limited career prospects. Furthermore, the burden of household chores, lack of exposure and contacts, limited access to information and traditional attitudes are also some of the causes that limit women’s aspirations.

The next section deals with the barriers to women’s advancement in detail. The unemployment rate for women in 1999 was 12.5 % at the national level, whereas for men it was only 4.3% (Annual Personnel Statistical Abstract, 2000). According to the report of the Civil Service Agency carried out in 2001, around 53.4% of women undertake rudimentary activities such as the sale of goods, and services on the streets and public places, cleaning, washing, and taking care of apartment houses, hotels etc (Annual Personnel Statistical Abstract, 2001).

Women tend to make up the greatest portion of the informal sector as petty trading, handicrafts, food processing, fuel wood carrying and domestic services as such activities require little or no education and skills. For instance, according to the Civil Service Agency’s report carried out in 2002, out of the total of 997,380 individuals engaged in the informal sector, 60% were women (FSCA Report, 2002). Social stereotypes that sustain the perception of women as less capable than men tend to engage women in small businesses that need small capital and less skill. Even among those women employed in the formal sector, the majority of them are engaged in low-paying jobs such as in clerical and manual activities (FSCA Report, 2004/05). Although the proportion of women increased from 14% to 22% in the period 1995-2005, their status in professional and administrative positions was insignificant (FSCA Report, 2004/05). Conversely, jobs with high-paying salaries tend to be occupied by men. For instance, in 2005/06, permanent female employees both in the federal and regional governments constitute
Among them, women in clerical and fiscal jobs were 60%, in custodial and manual 42%, administrative position 23.3% and in professional and scientific posts 10.2% (Annual Personnel Statistics Abstract, 2005/06). The occupational distribution among the sexes therefore shows that women are concentrated on low-paying jobs like clerical and fiscal jobs. That is to say, the gender gap has widened significantly at administrative and professional positions. Meanwhile, there has also been a steady increase of women in the civil service. At the Federal level, in 2006, 28.3% and 33.4% of women are employed in the professional and administrative positions respectively (Annual Personnel Statistics Annual Abstract, 2007/08). In addition, according to the 2008 statistical data obtained from the Federal Civil Service Commission, there were a total of 325,727 government employees out of which women constituted 30% (Annual Personnel Statistics Annual Abstract, 2009/10).

In general, the low participation rate of women in the formal sector is mainly coupled with low-educational attainment. In other words, the lack of access to the requisite skill and knowledge through training opportunities has direct impact on the level of participation of women in the labor force. In this connection, the National Labour Force survey conducted by FCSC in 2007 revealed that from the total trainees, only 1.3% of women employees received the training opportunity (Report of FCSC, 2007). Overall, women’s participation in government jobs from the years 2000 to 2010 for the entire work force is 34% and senior position 18% (Annual Personnel Statistical Abstract, 2011). There are a number of barriers that influence women’s participation in education and employment. The next section briefly explains these barriers.

4.3 Barriers to women’s participation

The multidimensionality of women’s subordination debared them from full-fledged participation in social life. Women’s oppression can be manifested through cultural prejudices, traditional perceptions and exploitation in society. Women also experience lack of free choice and control over their career development that in turn leads to underrepresentation in education and employment spheres. Despite the government’s
efforts to provide equal opportunities to women and design non-discriminatory policies, the existences of deep-seated discriminatory practices thwarted their progress and yet drive women to suffer from legal, economic, institutional and social constraints. Notably, societal norms and constraints that hinder the social progress of women constitute a key factor for the low participation of women in education and employment systems. Needless to say, societal discrimination against women have left them vulnerable to unequal pay for the same work performed, low paid or stereotypical jobs and positions. Furthermore, the patriarchal social organizations, sex based division of labour, sexual violence, sexual harassment, deprivation of reproductive control, lack of sex education, early marriage, abduction, lack of access to land resources and female infanticide groomed women for a life of subservience. Besides, it has been consistently pointed out that institutional arrangements for promoting women's rights lack the required human resource and budget. In short, the combination of the different factors that reinforce the gender gap in Ethiopia can be grouped into socio-cultural, politico-economical, legal and institutional categories.

4.3.1 Socio-cultural and economic constraints

It is known that the unequal status of women in Ethiopia has resulted from the socio-cultural norms which are deeply entrenched in society. The existing socio-cultural practices played a great role not only for women’s oppression but also were a major obstacle to their empowerment. Such societal norms are likely to impede women’s access to full citizenship as they prescribe different treatment for men and women. Deeply gendered socio-cultural norms, sex-stereotypes and patriarchal ideologies limit women’s chances for successful educational pursuits and confine their rights to matrimonial relationships. As is the case in many developing countries, women in Ethiopia traditionally have been consigned to strict societal roles that limited their activities to household chores and childcare activities while men perform activities outside home. In particular, women in the rural areas are heavily burdened in the household as they are expected to wake up so early, to clean, get children ready for school, do the cooking,
washing and sacrifice their carrier and aspirations. As is the case in other patriarchal structures, women in Ethiopia are similarly expected to play sex-stereotype roles that have marginalized them to low-wage jobs and denial of access to education. Women’s lack of access to higher education and their concentration in caretaker jobs are important explanations for their economic and social subordination.

4.3.1.1 Harmful traditional practices

Harmful traditional practices that range from female genital mutilation to the preference of male, female infanticide, violence against women, early marriage and early pregnancy practices related to child delivery have severe health and psychological implications on top of denying the basic rights of the girl child from birth on. In Ethiopia, cultural-based abuses including wife beating, societal abuse of young girls, rape and female genital mutilation (FGM) are pervasive social problems. Other harmful traditional practices surveyed by the National Committee on Traditional Practices of Ethiopia (NCTPE) include uvulectomy, early marriage, abduction, 28 and food and work prohibitions. Abduction and Absuma29 are among the different types of customary conclusions of marriage in Ethiopia. The fact that secondary schools in rural areas are located far from parents’ residence, parents tend to prevent their daughters from exposures to potential dangers of unwanted marriage as they travel to and from school. This, in turn, contributes to the reduction of potential girls in higher education. Furthermore, societal pressures urging the importance and necessity of early marriage may also limit women’s educational attainment. In the regional governments of the federations, especially in the Amhara and Tigrary regional governments, girls are used to be given away to marriage as early as seven years of age. The marriage could be concluded either through pre-arranged agreements between the parents of the future spouses in which the girl’s parents would in

28 Abduction is one of the harmful traditional practices that forces women to marriage. Most of the time, it is conducted while girls go to school or to fetch water in the rural areas. A man gets together with his friends stalk a girl he is interested in and abducts her. He takes her to his village, rapes her and keeps her as his wife.

29 Absuma is cross-cousin marriage in Afar society. It is a type of marriage that allows a person to marry his cousin.
turn receive fees or cattle in the form of dowry.\textsuperscript{30} According to NCTPE studies such marriages mostly end up in early divorce in the family, which ultimately contributes to the increase of prostitution and mass unemployment in the cities (2003:140). Moreover, a 1998 survey conducted by the NCTPE on harmful traditional practices against women indicated that the prevalence rate of early marriage in Ethiopia amounts to 75\% (Ibid: 139). It is believed that FGM has a widespread practice in Amhara, Tigray, Somali and Afar regional governments. Further, sexual harassment and rape constitute factors that affect female’s education. Due to fear of attack on females, parents become reluctant to send their daughters to school. As a result, in some rural areas, the majority of parents prefer to send their sons rather than their daughters to school (Emebet, 2004:85). This implies that parents tend to protect their daughters by sequestering them at home rather than risking their daughter’s safety. In short, apart from health and psychological complications, harmful traditional practices of various forms have influenced particularly Ethiopian rural women’s lives both by limiting their access to education and depriving their opportunities in employment.

\textbf{4.3.1.2 Patriarchal attitude}

Patriarchy is a system in which the role of men is considered as supreme and authoritative in the social organization of society. It is well known that Ethiopian societies are organized around patriarchal patterns where male domination and female subordination are still present, including in symbolic representation, proverbs, in the music etc. Indeed, the Ethiopian patriarchal culture bestows men with more power than women in all aspects of life and men’s activities and achievements are considered as superior to that of women. While men’s roles are recognized as standard, women are encouraged to be just like men at their best. Although the position of women may slightly vary among nationalities, women in general have suffered from economic dependency, inferiority perceptions, men supremacy, biased social attitudes and religious oppressions.

\textsuperscript{30} The Tigrary regional government would be an exception to this practice where the bride would receive money or property in the form of dowry from bridegroom parents.
Likewise, under most systems of customary law women have no right to ownership, inheritance and equal shares of matrimonial property. It is obvious that without property rights and economic power, women would be vulnerable to domestic violence and abuse. That is to say, customary and religious laws, which are based on the ideologies of the patriarchal order largely, promote women submissiveness.

Moreover, male supremacy and women suppression is often expressed in the oral traditions and in the form of songs in society. To mention some, “A woman’s ornament is her husband”, this Amharic proverb states that a woman without a husband is without charm and beauty. “A house built by a woman will be demolished by a hyena’s bark”. This Tigrigna saying is a clear case denoting a lack of consideration and of denigration of women’s capacity to produce something solid. “Women’s mind is in perpetual suspense like their hanging breast”. In this Afarigna proverb, women’s mind is characterized by uncertainties and is always in a floating state of mind similar to that of their breast hanging and moving over their chest. Such self-expressing stereotypes reflect the extent women experience discrimination and unequal treatment in their access to resources: food, health care, education, employment, control over productive resources and decision-making.

Many traditional beliefs and cultural attitudes regarding the role and status of women in society are still prevalent in Ethiopia and women find it difficult to extricate themselves from this culture and tradition lest they be ostracized. Notwithstanding, the increasing number of women’s education and entry into the job market, domestic work is generally considered as a woman’s duties and identity. Conversely, a man is perceived to be the bread winner, head of household and has a right to public life. Confining women’s identity to the domestic sphere is one of the barriers that discourage women from entering into the public life. In brief, patriarchal attitudes bred in the society through various levels of socialization processes are hostile to women’s involvement in all aspects of social, economical and political life in Ethiopia.

### 4.3.1.3 Sex-stereotyping
Although the set up of sex-role stereotypes varies between cultures, all share women’s inferior position in common. Sex-role stereotypes are well established in early childhood. The male child is valued more than the female child by the parents, siblings and the community. In other words, traditional practices and religious norms discriminate women from infancy throughout their lifetime. Mostly, the differentiation begins right from the birth of the female child and sometimes even before that during pregnancy in case of selective abortions and femicides. The idea that the birth of a boy is more valuable than the birth of a girl has resulted in favouring boys over girls in most cultures. It has been noted that in some parts of Ethiopia, the ceremony that parents perform differs if a newborn child is a boy or a girl. In the Northern part of Ethiopia if the baby is a girl, people applaud three times, whereas if the baby is a boy, they do so seven times.

In the Christianity religious practice, baptism differs for boys and girls. That is to say, the church baptizes boys at 40 days and girls 80 days after birth. By the same token, Islam requires different procedures in Akika. It is a ceremony of slaughtering a sheep by parents at birth of a child. In Akika, when the new born child is a boy, the parents slaughtered two sheep to express their happiness while one sheep is enough if the baby is a girl. Moreover, at an early age, girls are instructed to behave shy, quiet, not to speak out, to be obedient to their male partners, father, brother, and elders. At a later stage, women are also subjected to greater cultural taboos and restrictions. This in turn, makes women reluctant to assert or to question violation against their right because of a prevailing culture of not questioning or speak out. Conversely, traditional gender roles cast men as strong, rational, protective and decisive. Thinking that women are weak people who are incapable of many things, after marriage most women are expected to fully depend on their husband.

These sex-stereotypes are embedded in child-rearing patterns of Ethiopian societies that continue throughout the life cycle and contribute enormously to the gender disparities and inequalities faced by girls and women in school and in later life. Such practices preclude women’s greater involvement in education and the labour force.
As described earlier, societal attitudes pressurize and expect women to conform to norms of femininity. In this connection, Alasebu (1988) in her report to the UN Inter-Agency Group on Women in Development relating to the situation of women in Ethiopia, pointed out that the patriarchal nature of Ethiopian society is dominant in defining stereotyped roles. According to her report, society presupposes a woman to be a wife or mother and limits her role in the house and promoting ideals, and norms that reinforce these perceptions. Perceptions about the designated roles for women in society have acted against women’s educational gains and employment aspirations. That is to say, stereotyped women’s roles portrayed in textbooks, teaching methods, and the attitudes of teachers obviously limit girls’ achievement in traditionally male-dominated fields. Women eventually have come to accept to engage in traditionally female-dominated fields. In short, culture, religious beliefs and social norms are all factors which dictate women to play a stereotyped role by placing them under the control and authority of men. It also contributes to discrimination by restricting women’s role as housewives and mothers. Ultimately, such practices intrude women’s right and aspirations against advancing their careers.

Given this context, women’s equal right to exercise and enjoy economic, social and cultural rights is restrained by the socially constructed attitudes that make women to have a secondary societal position. These attitudes and practices are deeply embedded in social relations based on gender norms and they have reinforced women’s economic dependence on their male partners. Women’s low enrollment and excessively higher rate of unemployment are also an expression of high gender-based socio-economic inequity. As being marginalized and subordinated for a long time, women in Ethiopia are constrained in participating effectively in the social and economical sphere.

4.3.2 Structural and political barriers

Like in many developing countries, women in Ethiopia face structural and political barriers that hinder their rights to equality in the social, economical and political sphere. In addition to cultural and customary barriers, negative attitudes and sex-stereotyped
perceptions as reviewed earlier; gender inequality has also been attributed to structural and political barriers. These barriers include firstly, lack of accessibility and affordability to major information sources and bureaucratic barriers preventing access to information to women. For example, access to the radio, TV and the internet remains low in Ethiopia, particularly in rural areas. This in turn makes many women ignorant of the existence of laws that recognize their rights and can be invoked for their protection. As a result, women fail to claim their rights in the social, cultural, economical and political spheres of life.

Secondly, adherence to traditional roles and discriminatory attitudes that often starts within the family then further reinforces by the media and the school. Such portrays of men and women may have a significant influence on children’s development. This stereotyping also emphasizes the tendency for decision-making and leadership positions to remain the domain of men and further strengthens male supremacy in the public arena. Thirdly, the underrepresentation of women in most levels of government structures and in leadership positions especially in ministerial and other executive bodies have prevented them from having a significant impact on many key institutions of the government. It has been noted that the number of women in positions at decision-making levels remains low in spite of slowly inching their way into government positions. It is noteworthy that promoting more women in management positions plays a pivotal role in putting women’s agendas at a higher priority level towards the general process of advancement of women. It is often argued that without the active participation of women the goals of equality cannot be achieved.

Finally, and most importantly, is the failure to actively engage men in gender equality work. Gender has long been seen as women’s responsibility and gender equality as women’s agenda. This has been demonstrated in various occasions related to gender. For instance, there is a common practice to leave gender issues such as gender courses, workshops, conferences and seminars only for women. Gender issues have been widely marginalized and regarded as issues of importance only to women and of no concern to men. However, in practice the active engagement of men is crucial for the promotion of gender equality in a sustainable manner. It has been argued that gender equality is not
possible without the active involvement and support of men. It is stated that “Unless men’s practices, attitudes, and relations change, efforts to promote gender equality will face an uphill struggle” (Ruxton, 2004:5). It has also been emphasized that failure to address and involve men in the struggle to gender equality marginalizes women and will remain futile. “Men are the gatekeepers of current gender orders and are potential resistors of change. If we do not effectively reach men and boys, many of our efforts will be either thwarted or simply ignored.” (Kaufman in Ruxton, 2004:20). A move towards a gender equitable society thus requires the active engagement of men. In brief, it is important to include various activities at early childhood care and education settings to promote gender equality in the society.

4.3.3 Legal challenges

Sex-based discriminatory practices in Ethiopia did exist not only in the traditional and cultural practices of society, but also were affirmed in the legal system. The laws continued to institutionalize secondary status for women with regard to nationality and citizenship rights, pension benefit rights, marital rights, parental rights, and property rights. The family law relegated women to a position of submissiveness, as complied in the legal code of *Fetha Negest* around 1240 and codified in the 1960 Civil Code. The *Fetha Negest*, the law of the kings, was a customary law written by priests around 13th century, remained as supreme law of Ethiopia until the enactment of the first written constitution in 1931. As translated by Abba Paulos Tzadus the *Fetha Negest* requires a female to be obedient, shy, quiet, virgin, not to speak loudly and to refrain from entering the church during menstruation (1968:148).

Likewise, the 1960 Civil Code which was enacted during the imperial era affirmed women’s inferior position as demonstrated in its various provisions dealing with personal and property rights. For instance, in the personal relations, the husband is declared to be the sole head of the household and entitled to choose their common residence (Articles 635(1) and 641). Moreover, the husband is empowered to control the behavior of his wife. It is declared that unless otherwise provided by the code, “the wife owes him
obedience in all lawful things which he orders”; further, the wife is duty bound to perform the household duties if the husband is unable to provide her with servants (Articles 644(2), 635(2) and 646).

Similarly, with regard to common property and divorce, women would not have rights equal to men despite their many responsibilities in the household. The law specifically grants the decisive power to the husband for the administration of their common property. Besides, the husband has the right to control over the administration of personal property of the wife (Article 656). In case of divorce, if the alleged ground does not constitute serious grounds for divorce, the wife may lose her property despite the husband causing the ground for the divorce. For instance, a persistently battered woman who claims for divorce may lose her right in the division of property since wife battering and other domestic violence were not considered as serious grounds for divorce. In general, these discriminatory provisions have given predominance to the husband and used to create obedient wives.

As in many countries in the 19th century, the 1930 nationality law of Ethiopia did not provide women with equal right to men to acquire, change, transfer or retain nationality. More specifically, a woman who gets married to a foreigner loses her Ethiopian nationality provided that the marriage gives her the nationality of her husband. Article 4 reads:

A lawful marriage contracted abroad of an Ethiopian woman with a foreigner deprives her of the Ethiopian nationality if her marriage with the foreigner gives her the nationality of her husband; otherwise she keeps her Ethiopian nationality.

Moreover, it is stated that “every child born in a lawful mixed marriage follows the nationality of its father” (Article 6). In this discriminatory provision, while an Ethiopian man married to a foreign woman can transfer his nationality to his child; an Ethiopian woman married to a foreign man cannot do the same for her child. Such discriminatory provisions limit women’s right to nationality upon change in civil status.
With regard to the pension law, the existence of different retirement ages for men and women civil servants appears to discriminate against women. That is to say, a man retires on reaching the age of sixty years while fifty-five year is for a woman (Public Servants Pension Decree 1961: Article 4(1) (a)). The law also provides gender-based discriminations on pensions of deceased women employees to their heirs. In case of a widow’s pension, it stated that “if a public servant who is entitled to a pension dies before or after retirement, a pension shall be paid to his widow” (Article 15). This implies that when a man employee dies, the law automatically entitled his survivors’ to pension benefits. On the contrary, with regard to a widower’s pension, the law declared that “a pension shall be paid to a widower who was wholly or mainly supported by his wife at the time of her death” (Article 24). This implies that a widower would be entitled to his deceased wife’s pension if he could only prove that he was supported by his wife at the time of her death. In other words, women workers were discriminated by the legislation on the basis of their sex; the man is the victim, though.

Similarly, the criminal law ignores major forms of violence against women including female genital mutilation, marital rape and sexual harassment. In the 1957 Penal Code, domestic violence is simply treated under the general provisions stated for "bodily injury". Abduction and sexual offences such as rape are considered as crimes punishable under the law with rigorous imprisonment not exceeding three years, and when it is committed on an unconscious or defenseless woman not exceeding five years (Articles 558(1) and 559). However, the Penal law provides that no prosecution shall follow where a valid marriage is subsequently concluded between the victim and the abductor. In such cases, the perpetrator is exempted from criminal responsibility, Article 558(2) states:

Where the woman carried off is responsible and freely contracts with her abductor a valid marriage, proceedings shall be instituted only where such marriage is subsequently annulled by law.

By the same token, sexual offenders would be free from prosecution in the event of subsequent marriage. Article 599 reads:

Where the victim of rape, indecent assault or seduction, or abuse of her state of distress or dependence upon another, freely contracts a marriage with the
offender, and where such marriage is not declared null and void, no prosecution shall follow. Where proceedings have already taken place and have resulted in a conviction, the sentence shall terminate forthwith.

The loophole in the penal law could not provide women with the required degree of protection from violence.

In sum, the above described legal framework provided unequal rights and subordinate status to women in relation to men in various perspectives of life. Such discriminatory laws were repealed since 1994 after the promulgation of the FDRE constitution. Chapter five will review the policy developments in favour of women’s rights under the new legal framework.

4.4 Conclusion

As briefly reviewed above, although women’s organizations have been in existence since the late 1930s, the earliest ones were mainly engaged in welfare activities. In spite of some favorable practices for women, it hardly performed any sustainable activities towards tackling women’s deep-rooted discriminatory practices in a well-organized manner. Women’s issues have not been recognized and addressed as a right for many years. This was due to the lack of proper understanding, awareness and commitment of the leaders. The aim of women’s organizations during the Imperial regime was neither to fight the gender discriminatory practices nor was it to create awareness among women concerning their positions. Hence, the organizations did not facilitate women to secure their rights and struggle for their participation in various spheres of life.

Although women’s issues have come out as an agenda since the 1974 Ethiopian revolution, not much has been done in practice regarding the position and rights of women during the military regime. Women’s associations at the time were much more practically engaged in activities of the Workers Party of Ethiopia implementing political agendas of the ruling military power.
In brief, the role of those organizations both during the Imperial and the Military régimes had remained minimal as they failed to realize the emancipation and empowerment of women in terms of extending their participation in society. Nevertheless, since the change of regime in 1991 and the introduction of the federal administrative structures, women have been involved in achieving their rights through legal reforms and development of policies and programs.

As explained earlier, the societal norms and values bestowed women a relatively inferior status and a diminished position in every aspect of life. This manifests itself in considerable gender gaps in education, employment, economic and political power which further marginalized women within society. In order to address such drawbacks both the federal and regional governments have undertaken policy, legal and institutional reforms since 1991. Yet, women still remain at a considerable economic disadvantage relative to men. They have poorer access to well-paid jobs than do men. Although the removal of barriers by law to women’s access to the rights and benefits could be considered a first step on the path to equality, it may not bring about their full participation in all aspects of social life unless supported by practically implementable measures that could undo centuries of injustice and impediments. Particularly in Ethiopia, merely lifting the barriers through formal laws is not sufficient to bring about changes as discriminatory practises are deeply-seated in society.

Hence, it can safely be concluded that the abolition of discriminatory laws and the guarantee of equal rights per se would not bring about profound changes in women’s rights. In other words, equality of opportunities in substantive terms will not be achieved unless active measures are taken to redress the existing social and economic inequalities. It is, therefore, imperative to take steps to increase women’s participation, including the introduction of affirmative action measures with the goal of achieving gender balance in all branches of government, as well as in decision-making positions. To that effect, the government has adopted affirmative action measures that are targeted to place women in more advantageous positions than they historically occupied. The next chapter analyzes the legal framework of affirmative action programs for women in Ethiopia.
Chapter 5

5. Policy Development, Legal Reforms and Legislative Framework of Affirmative Action in Ethiopia

Although most barriers were believed to have been removed and non-discriminatory gender laws have become applicable worldwide during the 20th century, women still remain far-off from reaching equality in Ethiopia. Despite the introduction of emancipatory social reforms, women are among the most disadvantaged groups in all sectors of societal arrangements because of past legacies. As noted in the previous chapter, women's rights are affected by customary practices, religions, cultural attitudes and perceptions, as well as legislations. However, recent policy developments and legal reforms have stressed the importance of women's rights and gender equality. The period since the early 1990s has witnessed a major change in that there is much greater attention paid to gender. Ethiopia has adopted comprehensive plans of action, and has taken steps to improve women's rights in general legislation such as family laws and criminal laws and in policy formulations such as women’s policy, education policy etc. Further, to enhance women’s advancement and empowerment, the government has introduced affirmative action programs.

This chapter reviews some of the main developments concerning women’s rights since 1991 and further examines the legal framework of affirmative action. In so doing, it examines international and regional legal instruments recognizing the right to equality in general and to affirmative action programs in particular. Moreover, the chapter critically analyses the national legal instruments on affirmative action of different political phases. In this regard, the chapter explains the evolution of affirmative action and its eventual
practice under the subsequent regimes in Ethiopia, namely, the Imperial Era (1930-1974), the Military Regime (1974-1991) and the Ethiopian People's Revolutionary Democratic Front (EPRDF-led) federal government (since 1991 to present). Finally, the chapter will provide the constitutional dimension of affirmative action and examines various legal documents of both the federal and regional governments with particular emphasis on education and employment.

5.1 Policy development and legal reforms

As noted above, the status of women in Ethiopia has been subject to a variety of changes over the past two decades. Several measures were taken to strengthen the legal and policy framework for the implementation of women’s rights including the adoption of the Constitution. The government had also adopted the Women’s Policy and formulated a National Action Plan on Women and Women Development Change Package, which provided guidance on strategies and interventions for the empowerment of women (Women’s Affairs Office Report, 2004).

5.1.1 Policy development

Several policies have been developed to ensure gender equality and enhance women’s participation and empowerment at all levels in all spheres of life. For instance, the Women’s Policy enacted in 1993 ensures the promotion of gender equality in all spheres of society (Office of the Prime Minister). More specifically, the Women's Policy aims at eliminating harmful customary practices against women and guaranteeing the equality of men and women in the political, social, and economic domain by creating appropriate structures in government institutions. To materialize the implementation of the Women’s Policy, Women's Affairs Office and Departments were established within government structure of the federal and regional governments that could facilitate the inclusion of women's needs and concerns into government's policy and all development plans.
Similarly, the Education and Training Policy (Ministry of Education, 1994) provides a special focus on gender issues in the design and preparation of materials, and does attempt at preventing social and cultural barriers to women’s education by encouraging women’s involvement in non-traditionally gender designated fields of studies so as to bridge the gap in all sectors. The National Population Policy (Office of the Prime Minister, 1993) focuses on the empowerment of women through education and employment so as to have a say in regulating their reproductive health including family planning. Likewise, the Social Policy (Office of the Prime Minister, 1994) aimed at changing societal attitudes and community practices by modifying or abolishing existing laws, regulations and customs against women. The ultimate goal was to guarantee equal rights in political, economic and social activities and to create favourable environment for the provision of basic social services to women. Similarly, the Cultural Policy passed in (Ministry of Information and Culture, 1997) emphasized the elimination of practices and attitudes that had promoted stereotypes and prejudices against women. In the same way, the economic policy ensured equal rights of agricultural land use, control and participation of women in extension services. The Health Policy, the Employment Policy, Developmental Social Welfare Policy, the Policy on Natural Resources and the Environment aim at improving the livelihood of women (Transitional Government of Ethiopia, 1993). Moreover, Economic Reform Policy also aims at promoting economic development and improves the living standard of the most vulnerable sections of the society, particularly women (Ibid, 1992).

### 5.1.2 Legal reforms

As reviewed in the previous chapter, the legal system has rather contributed to the subordinate position of women in many spheres of life. To deal with such discriminatory laws and practices, measures have been taken in changing the legal system, amongst which the adoption of the 1995 FDRE Constitution which protects women’s rights in a more comprehensive manner can be cited. The FDRE Constitution emphasized the respect of human rights and freedoms and affirmed the equality of all persons in general and women in particular in marital, personal, and family matters. More specifically, the
Constitution recognizes the rights of women which, among others, include the right to maternity leave, affirmative action, participation in policy matters, exercising property rights, pension entitlements, access to family planning and protection from harmful traditional practices (1995: Article 35). Further, in the field of employment, women workers right to equal pay for equal work is recognized under the constitution (Ibid: Article 42(1) (d)).

Most importantly, significant steps have been taken to bring legislation in line with gender equality and social change, above all, with the FDRE Constitution. In this connection, reforms in the family law have redefined the rights and responsibilities of citizens by providing a new concept of gender relationship based on mutual respect, consent and solidarity. The Federal Revised Family Code represents the most important legal reform for women's rights. It has clearly departed from the previous model, which had been associated with submissiveness in bringing a number of positive changes in gender relations. In the revised family code, women would have equal rights with men while entering into and during marriage and at the time of divorce. For instance, the revised family code raises the minimum marriageable age for women from 15 to 18 year and declares that women have equal rights with men in the management of the family and administration of family properties (Articles 7(1), 50 (1) & 66 (1)). In addition, the revised family code recognizes a no-fault based divorce in which the spouses are not required to state a reason for the divorce. Accordingly, the spouses can dissolve their marriage either by mutual consent or petitions made by one of them and have equal rights in partition of family properties (Articles 76 & 90). The regional governments have also issued new family laws taking account of the socio-cultural and religious aspects of their respective societies.

Similarly, the criminal code has been recently revised to address different forms of violence against women. It has incorporated significant changes in respect of crimes committed against life, person and health through harmful traditional practices, notably against women. The 2004 Penal Code, which, inter alia, removed the marital exemption for abduction and rape, protects women from criminal acts such as Female Genital Mutilation (FGM), sexual exploitation and harassment. More specifically, FGM, which is
still prevalent in most parts of Ethiopia, becomes an offence and punishable before the court of law. Furthermore, circumcision, infibulations of the genitals of a woman and bodily injuries caused through other harmful traditional practices against a woman are also punishable under the law with imprisonment or fine (Articles 565-567). Likewise, the penal code declares that the conclusion of marriage between the abductor and the abducted subsequent to the abduction shall not preclude criminal liability (Article 587(3)).

Moreover, the 2003 Labor Proclamation and the 2002 Civil Service Proclamations have recognized the equal rights of women with men in the workplace and ensure the right to equal pay and equal benefits for equal work. Further, equalizing the compulsory retirement age for both men and women employees and equal pension treatment to survivors of deceased employees are positive steps enshrined in the 2011 Public Servants’ Pension Proclamation. Accordingly, age 60 has been recognized as retirement age of a public servant for both sexes (Article 18(1) (c)). In addition, both a widow and widower are considered as survivors of a deceased civil servant without any preconditions with respect to the sexes of the employee (Article 40(3) (a)).

Likewise, the law of nationality has made significant improvements in prohibiting discrimination based on sex and aims to ensure equality for women. It states that “a foreigner who is married to an Ethiopian national may acquire Ethiopian nationality by law without making a distinction among the sexes of the couples” (Ethiopian Nationality Proclamation; 2003: Article 6). Furthermore, the federal and some regional governments have enacted Land Use and Administration Laws that took gender equality into account. These laws guaranteed the equal rights of women in respect of the use, administration and control of land as well as in respect of transferring and bequeathing holding rights.31

In sum, these policy developments and legal reforms are intended to align with international conventions which Ethiopia has ratified and the Constitution which is the supreme law of the land. As reviewed in chapter two, enacting formal equality legislation

31 See for example the Federal Land Administration Law Proclamation No. 89/1997, Articles 5(4) and 6.
per se does not bring about equality, in fact. It has been suggested that affirmative action has a paramount importance in bridging the gender gap and bring about equality between men and women. Below, the principle of affirmative action will be analyzed in international and regional instruments.

5.2 Affirmative action in international and regional instruments

The need for affirmative action was felt and realized not only under the national constitutions and legislation, but also international and regional legal instruments did acknowledge in their human rights provisions. It is evident that international and regional legal instruments played a vital role in ensuring equality of opportunities and prohibiting discrimination on the basis of sex. Eventually, equality for men and women has become one of the fundamental principles recognized under international law and enshrined in all the generations of the main international human rights instruments, notably, the 1948 Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), and its optional protocol (1999), the African Charter on the Rights and Welfare of the Child (1999) and in other international and regional instruments.

5.2.1 International instruments

Affirmative action measures have enjoyed worldwide support in relevant international instruments over the last several decades. The International Convention on the Elimination of Racial Discrimination (ICERD), adopted by the United Nations General Assembly on 21 December 1965, recognizes the need for affirmative action measures in order to redress historic and contemporary forms of discrimination. Article 1(4) reads:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall
not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Further, the ICERD committee in its General Recommendation\textsuperscript{32} No. 32 distinguishes affirmative action from the general obligation of State parties to protect human rights and fundamental freedoms. It states that the obligation to take special measures is distinct from the general positive obligation of States parties to secure human rights and fundamental freedoms on a non-discriminatory way to persons and groups subject to their jurisdiction in that such general obligation is flowing from the provisions of the Convention as a whole and integral to all parts of the Convention (General Recommendation No. 32, ICERD: paragraph 14). In this connection it should be noted that Ethiopia has ratified ICERD in 1976.

Similarly, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the United Nations General Assembly on 18 December 1979, affirms principles of fundamental human rights and equality for women around the world. CEDAW defines discrimination against women as “any distinction, exclusion, or restriction made on the basis of sex which has the effect and purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (CEDAW; 1979: Article 1). CEDAW also requires state parties to incorporate the right to equality in their national constitutions or relevant legislation and eliminate discriminatory customs and practices by taking appropriate measures (Article 2). More specifically, CEDAW authorizes preferential treatment for women under Article 4(1):

\textsuperscript{32} General Recommendations and General Comments are official statements by UN treaty bodies that elaborate on the meaning of treaty obligations in order to assist states parties in fulfilling their obligations. Max Planck Encyclopedia of Public International Law. Available at: \url{http://ilmc.univie.ac.at/uploads/media/general_comments_recommendations_empil.pdf}, Accessed 13, December 2012.
Adoption by States parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present convention, but shall in no way entail as a consequence the maintenance of unequal or separated standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

As noted in the aforementioned provision, CEDAW considers the necessity of affirmative action as a temporary measure to be eventually discontinued when the objectives of equality of opportunity and treatment have been achieved. Article 4 recognizes that formal equality per se is not sufficient to create conditions of actual equality in women’s lives. Special measures to remedy persistent conditions of discrimination, in fact, are permitted until equality is achieved. Even though the above provision does not provide guidelines as to when one could determine that equality of opportunity and treatment has been achieved, it generally aims at the elimination of discrimination and for the achievement of equality so that women would be able to exercise their rights and enjoy equality in society. It must be emphasized that such measures of redress do not constitute discrimination in circumstances where implementation is required.

Moreover, the Committee on the Elimination of Discrimination against Women emphasis on the role of temporary special measures in its general recommendation No. 5. The CEDAW Committee declared that, “while significant progress has been achieved in regard to repealing or modifying discriminatory laws, there is still a need for action to be taken to implement fully the Convention by introducing measures to promote de facto equality between men and women.” Accordingly, it recommended “that States parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women’s integration into education, the economy, politics and employment” (General Recommendation No. 5: 1988). Furthermore, the CEDAW Committee affirms that the application of temporary special measures “must be discontinued when their desired results have been achieved and sustained for a period of time” (General Recommendation No. 25: 2004). This implies that the actual condition of women’s lives on the ground is a true indicator of whether equality has been achieved. In this regard, it should be pointed out that Ethiopia has ratified CEDAW in 1981.
Accordingly, the CEDAW Committee recommends Ethiopia to adopt temporary special measures such as gender quota throughout the structure of the National Electoral Board as well as to take affirmative action to increase the percentage of female’s judges, civil servants and diplomats, in particular in high-level positions (Concluding Observations, paragraph 27: 2011). Furthermore, the Committee recommends taking affirmative action in training and recruitment of female teachers, setting quota for female university students and giving priority to women in public sector recruitment (Ibid, paragraph 31 & 33:2011).

Similarly, the International Labor Organization’s (ILO) Convention No. 111, adopted on 25 June 1958 concerning discrimination in respect of employment and occupation declares that special measures taken based on sex would not constitute discrimination. More specifically, ILO Convention states that special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination (ILO, No.111; 1958: Article 5(1)). Furthermore, the ILO Convention states that any member may, after consultation with representative employers’ and workers’ organizations, take other special measures designed to meet the particular requirements of persons such as sex, age, disablement, family responsibilities or social or cultural status (Article 5(2)). This implies that special protection or assistance that is required for such persons would not be deemed to be discriminatory. Ethiopia has ratified the ILO Convention No. 111, in 1996.

The United Nations Committee on Human Rights used the term ‘affirmative action’ to ensure the positive enjoyment of rights required by Articles 3, 2 (1) and 26 in its comment on the anti-discrimination provisions of the International Covenant on Civil and Political Rights (ICCPR). The UN Human Rights Committee in relation to equality between the sexes set forth in Article 3 of the ICCPR further declares the need for affirmative action in addition to the preventive measures for preventing gender discrimination and for the better enjoyment of rights (General Comment No. 4; 1981: paragraph 2). Further, the UN Committee on Human Rights in its General Comment No. 18 on Non-Discrimination pointed out that “the principle of equality sometimes requires State parties to take
affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant” (General Comment No. 18; 1989: paragraph 10). The UN Human Rights Committee further declares that “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Covenant” (General Comment No. 18; 1989: paragraph 13). This implies that State parties can take affirmative action in cases where the said differentiation is reasonable, objective and in pursuit of a legitimate aim. Hence, if the preferential treatment is to correct conditions that cause discrimination prohibited by the Covenant, it is a legitimate differentiation. Moreover, in its General Comment No. 25, the UN Human Rights Committee analyzed the adoption of affirmative measures in relation to the right of all citizens to political participation on the basis of equality set forth in Article 25 of the ICCPR.

To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens (General comment No. 25; 1996: paragraph 4).

In order to strengthen the importance of affirmative action, the International Covenant on Economic, Social and Cultural Rights (ICESCR), declares that “state parties are required to take concrete steps to fully realize the rights of women and persons with disabilities under the covenant” (Article 2 (1)). To that end, the UN Human Rights Committee further asserts that since “principles of equality and non-discrimination are not always sufficient to guarantee true equality, temporary special measures adopted to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others does not constitute discrimination” (General Comment ICESCR, No. 16, 2005, paragraph 15). It should be noted here that Ethiopia has ratified ICCPR and ICESCR in 1993.

Likewise, international organizations have endorsed preferential treatment for women. In this regard, the UNESCO Convention against Discrimination in Education, which is
adopted in 1960, prohibits any kind of discrimination in the field of education “based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth” (Article 1). Furthermore, this Convention requires state parties not only to eliminate discrimination in education but also to adopt positive measures to promote equality of opportunity and treatment in that field (Article 4). In particular, in the field of education and training, a report by the United Nations Educational, Scientific and Cultural Organization (UNESCO) pointed out the necessity of preferential treatment for women in order to bridge the existing gender gap in education through affirmative action programs. The UNESCO Report (1979: 264) stated that “until full equality of educational and training opportunities is assured, there is a need for specific programs for girls and women, so as to enable them to gradually reduce and eventually eliminate the gap”.

Similarly, world conferences on women convened by the United Nations have adopted affirmative action measures in various forms. For instance, the United Nations Third World Conference on Women held in Nairobi in 1985, referred to the policy of positive action for women as a general strategy for redressing systemic or de facto discrimination. Accordingly, the declaration of the conference states “legislation that concerns women as a group should also be effectively enforced and monitored so that areas of systemic discrimination or de facto discrimination against women can be redressed. To this end, positive action policy should be developed.” (The Nairobi Forward-looking Strategies for the Advancement of Women; 1985: paragraph 61)

The United Nations Fourth World Conference on Women held in Beijing in 1995 declared that it would require governments to take positive action to bridge the gender gap in various situations. To mention, “…establishing the goal of gender balance in governmental bodies and committees, as well as in public administrative entities, and in the judiciary, including setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action, in all governmental and public administration positions” (The Beijing Platform for Action, 1995, Chapter IV, Section G, Action 190.a). Further, Chapter IV, Section F, Action
165.0, “Enact and enforce equal opportunity laws, take positive action and ensure compliance by the public and private sectors through various means”, Chapter IV, Section B, Strategic Objective B.3, “Improve women’s access to vocational training, science and technology and continuing education”. In addition, Action 82.h. states “Develop curricula and teaching materials and formulate and take positive measures to ensure women better access to and participation in technical and scientific areas, especially in areas where they are not represented or underrepresented.” In sum, in all the international legal texts and world women conferences declarations reviewed above, a consensus has emerged for the protection of vulnerable groups particularly women, prevention of discriminatory practices and abolition of existing gaps through redress mechanisms. With respect to the enforcement of international law in the Ethiopian legal system, the Federal Democratic Republic of Ethiopia (FDRE) Constitution provides that all international agreements ratified by the country are integral parts of the law of the land (Article 9 (4)). This Constitution further specifies that the fundamental rights and freedoms it has recognized shall be interpreted in a manner conforming to the international instruments ratified by Ethiopia. Article 13(2) reads:

The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.

However, the lack of implementation in the domestic legal system could be explained by reference to a number of factors such as lack of awareness, lack of sufficient resources and absence of strong institutional framework.

5.2.2 Regional instruments

Regional legal texts and conferences have also adopted affirmative action to eliminate discriminatory practices against women as well as to promote gender equality. The African Charter on Human and Peoples’ Rights is an African regional human rights instrument adopted on June 27, 1981 by the Organization of African Unity (OAU), now
the African Union (AU). The AU Charter on Human and Peoples’ Rights intends to promote and protect human and peoples’ rights and freedoms among the African nations. In particular, it enshrines the principle of non-discrimination on grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status (Article 2). The AU Charter on Human and Peoples’ Rights further declares equality of individuals before the law and calls on all state parties to eliminate discrimination against women and ensures the protection of the rights of women and the child as stipulated in international declarations and conventions (Article 3). More specifically, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, commonly known as The Maputo Protocol or African Women’s Protocol, adopted in July 2003 in Mozambique aims at ensuring the protection of the rights of women. As indicated in its Preamble, this Protocol was adopted to address the concern that “despite the ratification of the African Charter on Human and Peoples’ Rights and other international human rights instruments by the majority of States Parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices”. Hence, the Maputo Protocol targeted as a response to the lack of implementation of international human rights law dealing with women’s rights. Furthermore, this Protocol declares the need for the elimination of discrimination against women through appropriate legislative, institutional and other relevant measures and calls for “corrective and positive action in those areas where discrimination against women in law and in fact continues to exist” (Article 2 (1) (d)). In particular, states parties are required to take affirmative action to promote women’s equal participation in the political life (Article 9 (1). In addition, in areas of education and training, state parties are required to take action to promote women’s enrollment at all levels and disciplines (Article 12 (2)). Nevertheless, it is important to note that Ethiopia has not yet ratified the Maputo Protocol. As informed by officials at the Ministry of Foreign Affairs, it is still under discussion with the concerned bodies including cultural and religious leaders.

Moreover, the sub-regional organizations in Africa have brought the issue of women rights on their agenda. Among others, the Intergovernmental Authority on Drought and
Development (IGAD), which was formed in 1986 among seven East African countries,\textsuperscript{33} has adopted various mechanisms to ensure women’s right to equality. The IGAD women parliamentarians adopted the Addis Ababa Declaration and agreed to compensate women for actual barriers that prevent them from their fair share of the political seats. For this reason, the Committee of IGAD Women Parliamentarians has recommended the reservation of quotas and other affirmative action programs for the attainment of gender equality.\textsuperscript{34} Once the system comes into being, member states are obliged to advocate for it to be enshrined in the constitutions and laws, be implemented, monitored and evaluated to ensure increased women participation at all levels of government. This broad acceptance of affirmative action by international law has significance for the policy under national legal regimes. Affirmative action under national legal contexts will be analyzed in the next section.

5.3 Affirmative action under the national legal systems

This section examines the constitutional dimension of affirmative action in the framework of the various constitutions adopted by the consecutive regimes vis-à-vis the principles and objectives of affirmative action; namely the 1931, 1955 (amended) (Imperial), 1987 (Military) and 1995 (Federal) constitutions. Under the present system, both the federal and regional governments have also adopted subsequent legislation to give effect to the affirmative action policy in the education and employment sectors for women.

5.3.1 The Imperial Era (1930-1974)

\textsuperscript{33} Djibouti, Somalia, Eritrea, Sudan, Ethiopia, Uganda and Kenya are member states.

\textsuperscript{34} The Addis Ababa Declaration on the Enhancement of Women’s Participation and Representation in Decision Making Positions, 2009.
Although the 1930 Constitution, considered the first written Constitution of Ethiopia, does not contain a provision regarding equality or the right to non-discrimination, the 1955 revised version had recognized the right to equality. In particular, it is stated that “No one shall be denied the equal protection of the laws” and further it is declared that “the equal enjoyment of all civil rights and, there shall be no discrimination amongst Ethiopian citizens” (1955: Articles 37 and 38 respectively). Nevertheless, this revised version does not provide any special measures for disadvantaged groups of society including women, the disabled, neglected ethnic groups and other identities. Instead it recognizes formal equality in which the law applies equally to all the people.

5.3.2 The Military Regime (1974-1991)

After the demise of the imperial regime in 1974, the military government that took control of the state enacted a new Constitution of the People’s Democratic Republic of Ethiopian (PDRE) in 1987. Article 35 of the PDRE constitution provides the Equal Protection Clause which states that “Ethiopians are equal before the law, irrespective of nationality, sex, religion, occupation, social or other status and it further indicates that equality shall be ensured through equal participation of citizens in political, economic, social and cultural affairs of the country. The PDRE constitution further declares the equal rights of women and men. Emphasizing on gender equality, it also provides affirmative action measures for women. Accordingly, Article 36 (2) states that:

The state shall provide women with special support, particularly in education, training and employment so that they may participate in political, economic, social and cultural affairs on an equal basis with men.

It has to be noted that the PDRE constitution is the first in the history of Ethiopia to recognize the need for special measures for women in areas of education, training and employment. Though the PDRE constitution does not employ the term ‘affirmative action’, in effect, preferential measures are impliedly envisaged for women in education, training and employment to enable them to participate on an equal basis with men. However, the aforementioned provision limits the scope of special measures only to
education, training and employment sectors. It could, therefore, be argued that limiting the scope of application of affirmative action only to the three sectors mentioned above would be insufficient taking the overall status of women in Ethiopia. It is known that women’s access for political participation and active involvement in decision making processes including policy formulation are vital to ensure women’s equal access and full participation on the affairs of their country. Apart from its very limited scope, the practicability of the provision demonstrated that even in education, training and employment sectors women did not enjoy their right to affirmative action sufficiently. This was mainly because of the absence of subsequent legislation to enforce the implementation of affirmative action programs in the government institutions.

In sum, during the military regime, the position of women has been lifted up to a certain extent benefit from education in general and literacy program in particular. As has been noted in chapter four, the National Campaign on Literacy (1979-1990) that aimed at achieving a high percentage of national literacy level all over the country had played a great role in overcoming illiteracy among women as a significant proportion of the population had attended the literacy programs. However, with regard to employment not much has been achieved to enhance the participation of women especially in professional jobs. This was partly because of the lack of enabling legislation that would ensure and speed up the implementation of the constitutional provisions satisfactorily.

5.3.3 The Transitional Period (1991-1994)

As reviewed in chapter four, after the downfall of the military regime in 1991, the EPRDF-led transitional government has enacted the Transitional Period Charter of Ethiopia that (apart from declaring transition to democracy and free market economy) has mainly focused on freedom, equal rights and self-determination of peoples. In addition to introducing a multi-party system for the first time in the political history of Ethiopia, various policies were launched during the transitional period as reviewed earlier in this chapter. By way of illustration, the Women’s policy, the Education and Training policy,
the Social policy, the Population policy etc, which were enacted during the transitional period, gave due attention to gender related issues in order to raise the participation of women in education, and to ensure the full enjoyment of economic and social rights by women. All in all, where the rights of women are recognized in various policies during the transitional period, these tend not to be adequately translated into practice. This was mainly due to the political instability of the country during that period. The difficulties were believed to have been partially redressed during the federal system.

5.3.4 The Federal Government (Since 1995)

The election of Ethiopia's 547-member of Council of Peoples’ Representatives was held in June 1994. The constituent assembly adopted the constitution of the Federal Democratic Republic of Ethiopia in December 1994. Soon after, the four-year tenure of the Transitional Government of Ethiopia was concluded in accordance with the charter of the transition program, and hence the Council of Representatives of the Transitional Government has transferred power to the elected Council of Peoples’ Representatives on 18th of August 1995. As reviewed in the preceding chapter, the de facto federal system adopted since 1991 became de jure in which the administrative structure of the Federal Democratic Republic of Ethiopia has had to be divided into nine ethno-linguistically based regional governments and two chartered federal cities. According to the federal government's Constitution, each regional government has legislative, executive and judicial power to administer internal affairs of their respective regions.

5.3.4.1 The right to equality under the FDRE Constitution

It is important to note that the FDRE Constitution (hereinafter called the Constitution), which was enacted in 1995 guarantees freedoms and human rights for all citizens irrespective of sex, age, religion and ethnic origin. In light of the history of the practice of discrimination against women in Ethiopia, the importance of the principle of equality is
reflected in the very first section of its Constitution. The Preamble of the Constitution states that “the fulfillment of this objective requires full respect of individual and people’s fundamental freedoms and rights, to live together on the basis of equality and without any sexual, religious or cultural discrimination”. The constitutional commitment to equality emerges from the inequalities and injustices of the past. As reviewed in chapter four, stereotypical attitudes, discriminatory laws and harmful traditional practices have prevented women from engaging in social, political and economic life on equal basis with men. Hence, to ensure people’s fundamental rights, the Constitution has reaffirmed the pivotal importance of the principle of equality and non-discrimination in various provisions. Article 25 is the most relevant provision which embodies the fundamental rights to equality before the law and the equal protection of the laws which are available to all. It reads as:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.

The aforementioned provision deals with two kinds of right, namely the right to equality before the law and the equal protection of the laws. The right to equality before the law alleges the absolute supremacy of the law in that all individuals are subject to ordinary law of the land regardless of their status, race, and sex etc. In the same way, the equal protection of the laws means that the law should be applied in the same manner to every person irrespective of rank and status of the parties in the society. In other words, it asserts to treat all people the same regardless of their race, religion, sex, and language etc. Moreover, the Constitution prohibits arbitrary social discrimination among individuals and guarantees the equal right to political participation to vote and to be elected on a non-discriminatory basis; ensures the equal rights of men and women in marital, personal and family matters as well as in the use, transfer, administration and control of land and guarantees equality of opportunity in employment, promotion, pay, transfer of pension entitlements and publicly funded social services (1995: Articles 34-41). In brief, the
Constitution provides better legal protection for women who were disadvantaged in the past.

5.3.4.2 Affirmative action under the FDRE Constitution

The Constitution having acknowledged the past inequalities and discriminations suffered by women, has sought to incorporate remedial measures that could enable women to compete and participate on the basis of equality with men in political, economic and social life in both public and private institutions.\(^{35}\) The official usage of the term ‘affirmative measure’ has first appeared under Article 35(3). It reads:

The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.

As can be inferred from the aforementioned provision, the justification for affirmative action is mainly the existing socio-economic and political position of women and the dire need to rectify the historical legacies inflicted upon them. In view of this, the Constitution intends to rectify the legacy of historical discrimination against women so as to enable them to participate on an equal basis with men in various activities of societies. As reviewed in chapter four, women lack resources and opportunities that they probably would have had if discrimination had not inflicted. Indeed, the historical inequalities brought the subjugation of women that in effect limited their participation in decision making posts and in positions that required highly qualified professionals. In view of this, women need to be compensated for being relegated into a disadvantageous position for decades. To this end, all women are entitled to affirmative action regardless of their economic or educational status. Inevitably, women are neither required to prove personal

\(^{35}\) The regional governments have a similar provision in their Constitutions recognizing the right to affirmative action for women. For instance, Article 34(3) of the Revised Constitution of Afar National Regional State No.1, July 2002 and Article 35(3) of the Revised Constitution of Tigray Regional State No.45, July 2003.
discrimination inflicted on them nor reveal their economic disadvantages in order to be entitled for the program.

The Constitution does not set forth an explicit scope to the implementation of affirmative action programs. It rather provides the program to enable women to compete and participate on an equal basis with men in the sphere of social, economic and political life in very general, if not vague, terms. The question still remains whether the implementation of affirmative action also includes various fields such as land allotment, health services and housing. It, therefore, does generate a discrepancy in implementation. Due to this, some people perceive that the scope of affirmative action is limited only to education and employment sectors. This was partly because there are specific regulations regarding affirmative action in these particular social sectors and partly because the program is largely implemented in these fields. Although the Constitution does not clearly specify as to which fields of life affirmative action measures should be employed, it can be suggested that special programs need to be designed in various realms in order for women to be able to participate equally in the political, economic and social spheres.

The on-going debate around affirmative action is whether or not it has a life-span. The Constitution does not specifically indicate the life span of affirmative action programs. Actually upholding the clear words of the Constitution, its temporariness is implicitly expressed under Article 35(3) which states: “The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men…” It can be said that affirmative action is envisaged as a temporary measure that would end once equality has been achieved. Then, if it is a temporary measure, the question arises as to when it shall terminate. As it can be inferred from the provision, affirmative action is aimed at redressing imbalances caused by history, tradition and customs. The phrase “the historical legacy of inequality and discrimination” implies that affirmative action is not an event but rather a long-term process of measures as these imbalances can only be removed through long-term course of qualitative and quantitative social transformation. Hence, taking account of the position of women in Ethiopia, the life span of affirmative action could take years or even generations before reaching an equal level of gender playing field. That is to say, the
deep stain of these imbalances that has left on women needs time to be removed. In this regard, subsequent legislation needs to set clear targets of how it will end. Although there is no specific policy document on affirmative action, affirmative action programs are included in the legislation of higher education and employment sectors both at the federal and regional governments. The next section deals with the laws on education.

5.3.4.3 Legislation on education

Every human being, woman, man, youth and the child have the right to education. The right to education has been universally recognised under the various international conventions and national constitutions. Indeed education is a basic instrument for the economic and social development of society in general and women in particular. The education of women in Ethiopia plays a significant role in improving their livings and empowers them to participate in economic, social and political life. Owing to this, ensuring equality of access at all levels of education and improving women’s participation in higher education were considered to be of paramount importance. As reviewed in chapter four, women did not receive education at all levels in equal terms as men for many years. Despite the importance of women’s participation in education, their educational achievement and access was constrained by factors such as economical, social, cultural, familial, personal and institutional ones. For this reason, the federal government has enacted legislation that could increase women’s enrollment at higher education which is under the direct auspices of the federal government.

Affirmative action in Higher Education predated the affirmative action provisions of the FDRE Constitution. The Ethiopian Ministry of Education (MOE) has started implementing affirmative action programs for women in the year 1991/92. The question which arises at this point is, of course, whether there was legal basis to provide affirmative action for women in education prior to the promulgation of the constitution. In this regard, the legal basis for the application of affirmative action may be traced back to the Convention on the Elimination of Discrimination Against Women (CEDAW), which Ethiopia has ratified in 1981. As mentioned earlier in this chapter, CEDAW
requires State parties to implement affirmative action for women in order to bridge the gender imbalances. The Higher Education Proclamation No. 351/2003 provides for affirmative action for women. Article 33 (1) reads:

Entry assessment or admission procedure designed for any female, disabled student, a student who has completed high school education in a developing Region and who is native of the nationality from such Region or a student from the nationality whose participation in Higher Education is low shall be different from others. They shall, during their stay in the institution, get special support; particulars of such support shall be determined by the Ministry.

As it can be inferred from the aforementioned provision, affirmative measures were provided not only in accessing to higher institutions, but also for a continuous support during their stay in institutions. By way of explanation, the phrase ‘during their stay in the institution’ implies that the special support envisaged by the legislation extends to students’ study period in the institutions.

Similarly, the new Ethiopian Federal Higher Education Proclamation No. 650/2009, which replaced the 2003 higher education proclamation, also provides for special support for disadvantaged groups.

There shall be special admissions procedures for disadvantaged citizens to be determined by regulation of the Council of Ministers and to be implemented by directive of the Ministry issued hereunder (Article 39 (4)).

Although the proclamation does not define disadvantaged citizens, women could easily be categorized as the prominent group on the basis of the Constitution. As part of the government’s commitment to increase the number of women in the civil service, special attention is given to women candidates in the recruitment process. The next section deals with the legislation on employment.

5.3.4.4 Federal and regional legislation on employment
In fact, women’s employment in the public sphere has been minimal compared to that of men nationwide. As reviewed in chapter four, the top management positions are overwhelmingly dominated by men and women are concentrated in low-paying jobs partly due to social norms, customs and preferential opportunities. Though there were directives in the employment sector on affirmative action programs, women had not been able to benefit from it for many years. This was because of the bureaucratic hurdles in the civil service. Accordingly, all criteria of recruitment, transfer and promotion of human resource have been applied for both women and men in a gender neutral way despite constitutionally mandated provisions for affirmative action. It was only in the year 2002 that affirmative action for women in employment has been incorporated for the first time in the civil service proclamation.

(I) Federal legislation

Despite women’s contribution to the overall economic development of the country through both remunerated economic and unpaid domestic activities, they have limited access to formal employment opportunities. Hence, women remain the largest unemployed in the formal sector due to their limited access to education and trainings. Indeed, women comprise approximately 34 percent of the civil service workforce according to the 2007 Personnel Statistics of FCSC. As a result, in order to change the disparities in employment, affirmative action was adopted by the Federal Civil Service Commission (hereafter the Commission), established by Proclamation No.8/1995 with a view to realize a meritorious, efficient, productive and permanent civil service. Subsequently, the Commission issued two circulars mandating special measures for women in recruitment and promotion.

The first circular of the Commission issued in 1997, has the objective of increasing the representation of women in various levels of decision-making and high governmental posts. In respect to this, preferential promotion of women is authorized in job vacancies that required candidates to possess a first degree or its equivalent and for job openings whose basic monthly salary starts from 600 birr\(^{36}\) and above. Accordingly, if a woman

\(^{36}\) In 1997, 600 Ethiopian birr was around 87.46 US dollars.
candidate and a man candidate draw equal results in examinations, the woman applicant would be automatically given preference (Circular on Promotion, 1997: Article 10.7.3 (2)). Moreover, if two or more women candidates and one or more men candidates compete for promotion and draw equal results, the men candidates would be compelled to withdraw from the competition and women candidates would compete among themselves (Ibid: Article 10.7.3 (4)).

The second circular of the Commission that was issued in 1998, taking account of insignificant proportion of women employees from the total working population, has recognized affirmative action measures in recruitment. In particular, the circular has given preferential treatment for women in advertisement for vacancies by inserting the phrase “women candidates are encouraged to apply” or by giving preference to women candidates (Circular on Promotion, 1998: Article 10.7.3 (3&4)). The civil service has thus taken positive steps to bridge the gender gap considering the low participation of women in the formal sector especially in higher position.

Subsequently, the Federal Civil Servants Proclamation No. 262/2002 has adopted affirmative action measures in giving preference to women candidates in the recruitment process in a regular manner. Specifically, Article 13 (3) declares that preference would be given to women candidates if they have equal or close scores to that of men candidates. By way of explanation, when women candidates have equal score or if they stood in rank from first up to third in the recruitment process and if their grade difference is not more than 3% with their men counterparts, women are given preference over men (Federal Civil Service Commission Directive, 2002: Article 5.6.2 (1)). Here, it has to be noted that the proclamation envisages the execution of affirmative action within the parameters of the merit principle in that special attention would be given to qualified women candidates in cases of comparable qualifications. In other words, women are required to fulfill the expected grade and the minimum qualification for the job to be eligible for affirmative action. Indeed, women are given preference over men only if they could score equivalent results with their men counterparts as per the proclamation. However, the 2002 federal civil servants proclamation does not include preferential measures for women in promotion that could in turn put women in a disadvantageous position. Besides, the
sample format attached to the federal civil servant directive on selection and recruitment of human resource in the federal government institutions includes the contents of an advertisement for a vacant position, among other things, at the bottom of the format the phrase “Women are encouraged to apply” is inserted.

Likewise, the Federal Civil Servants Proclamation No. 515 of 2007 also provides special attention to women candidates in the recruitment process. It has to be noted that this new proclamation extends the application of affirmative action to promotion. This proclamation declared that a person who meets the qualification required for the position and scores higher grades than other candidates will get priority to fill a vacant position (Article 13(2)). However, exceptionally in recruitment and promotion process, the proclamation provides for preferential treatment for women, disabled people and members of nationalities comparatively less represented in the federal government office having equal or close scores to that of other candidates (Article 13 (3)). Accordingly, when beneficiaries of affirmative action compete with non-beneficiary candidates, preference would be given to the former if their total grade difference is less than 3% (Directive on Recruitment and Promotion of Civil Servants, 2008: Article 5.6.1 (a)).

It should be noted that the directive on recruitment and promotion of civil servants, prioritizes among beneficiaries of affirmative action programs. That is to say, when the competition is among beneficiaries of affirmative action, preference would be given for disabled people, women and members of nationalities comparatively less represented in the government office, respectively (Ibid: Article 5.6.1 (b)). The directive, therefore, assigns sequence priorities to the three designated groups in case of selection in recruitment and promotion process. It can be suggested that although such assignment of sequence is a solution for practical problems related to offering priority among members of designated groups, it seems to be contrary to the proclamation. In other words, the proclamation does not prioritize among eligible designated groups; it does not put beneficiary groups in a hierarchical order.

Furthermore, the government provides special selection procedures for women applicants for short-term training and higher studies abroad. Accordingly, 30% of the scholarships is reserved for women candidates provided all requirements of the scholarship screening
body being equal in the scholarship opportunities is offered (Directives on Training and Scholarship of Civil Servants Abroad, 2002: Article 7.1.1). However, it is indicated that both women and men can compete for the remaining (70%) scholarship grants and those employees who would evince prominence would be awarded the scholarship (Article 7.1.2). But if a woman and a man score the same point, the woman would be given priority (Article 7.1.3).

With regard to the age limits, the directives on training and scholarship of civil servants abroad puts different age limits for female and male candidates. For instance, in the undergraduate education opportunities, the age limit of candidates for further education abroad should not be exceeding 25 years while it extends up to 27 years of age for female candidates; in case of graduate education opportunities, while male candidates should not exceed the age of 35, female candidates are allowed to compete up to the age of 40 and for doctoral studies while candidates should not exceed the age of 40, women are allowed to compete up to the age of 45 (Article 8.2.1). Meanwhile, according to the directives on training and scholarship of civil servants abroad, the age limit of candidates for short-term trainings, graduate diplomas and specializations is determined upon by the scholarship granting body or by an ad hoc committee established for that purpose (Article 8.2.2).

It is evident that such special selection criteria should encourage women candidates to take part in the competition which, in turn, advances their academic achievements. Nevertheless, it is noteworthy to mention that the legislation is limited in its scope to foreign scholarships excluding scholarships arranged with in the country. However, taken the expansion of national higher educational institutions in different regional governments, the directives on training and scholarship of civil servants abroad, therefore, invokes an amendment so as to extend women’s rights to national scholarships, too. Based on the federal legislation States’ legislation have also adopted affirmative action programs for women.

(II) States legislation
States’ legislation (the Afar and Tigray States) are similar to the federal legislation on employment regarding affirmative action. For instance, the Afar State’s civil servants proclamation prohibits any kind of discrimination among civil servants including sex. It also provides for vacancies to be filled based on merit and free from corruption. In addition, in an effort to increase the number of women in the civil service, the Afar State’s civil servants proclamation 2007 has adopted affirmative action measures in giving preference to women candidates in the recruitment process. Accordingly, preference would be given to women candidates if they have equal or close scores to that of men candidates (Article 13). However, this proclamation limited the application of affirmative action to recruitment excluding promotion and transfer. Although the proclamation put forward for enactment by directives on the recruitment, hiring and promotion of civil servants, it has not yet been issued to date. This has created practical problems in implementing affirmative action for women civil servants in the region. The next chapter will deal with the challenges in detail.

Likewise, the Tigray State’s civil servants proclamation 2008, forbids any discrimination among applicants based on sex, religion, political affiliation etc. and only those applicants who can score highest will be assigned in the position (Articles 13 (1) & (2)). Nevertheless, this proclamation adopted preferential treatment to women, disabled people and members of nationalities comparatively less represented in the government office, having equal or close scores to that of other candidates (Article 13 (3)). Moreover, the Tigray State directive on selection and recruitment of civil servants require the concerned body to give priority to these sections of the society during registration of applicants as well as in recruitment, promotion and transfer process (Article 12 (5)). More specifically, preference is given to women candidates if they score an equal grade to that of men candidates or if they rank from first to third and if their average grade is less than 3 points (Articles 27 and 51 (e)). It has to be noted that providing special attention to women employees in case of transfer from one post to another or from one area to another gives an opportunity for women to pursue their career especially when they are transferred into urban areas. Furthermore, it is declared that staff recruitment and selection committee’s include female representation unless there is shortage of qualified personnel. Inevitably,
such representation of women in committees plays a vital role in advancing women’s values and concerns.

Although the Afar State has not yet enacted the legislation on training and education of human resources, the Tigray State has issued its own legislation on training and education of human resources. The Tigray State directive on human resource planning has adopted affirmative action measures in setting preferential age limits for women candidates for higher education. Accordingly, in the undergraduate education opportunities, candidates for scholarships for education should not exceed the age of 33 for men while women candidates can compete up to the age of 35; in case of graduate education opportunities, the age limit of men candidates for scholarships should not exceed 45 while women candidates are granted to compete up to the age of 47 and for doctoral studies men candidates should not exceed the age of 50 whereas women can compete up to the age of 52 (Tigray State Directive on Human Resource Planning, 2006: Article 3.2.4 (a-c)). The Tigray State directive on human resource planning grants three additional points for women candidates on top of their total grades during examinations. In other words, during staff competition for scholarships, different criteria such as work experience, discipline, job performance etc are taken into consideration and each of these criteria will be graded to select the final candidates. In this regard, on top of the total results, extra three points is given for women candidates as well as women are given preference over men if they score equal grades in a selection process (Ibid: Article 3.3.2).

Most importantly, in 2006, the Tigray State has enacted a regulation for the implementation of affirmative action for women civil servants in recruitment and selection processes. This regulation has incorporated preferential treatment for women employees in various stages (Articles 2.1-2.4). Firstly, in advertisement, job openings are required to insert the phrase “women are encouraged to apply” in order to widen the applicants pool. This also encourages potential women candidates to apply.

Secondly, in recruitment and selection procedure, 10% is always reserved for women while they could compete with men for the remaining 90% for positions that require a qualification less than a diploma. In this regard, preference would be given to women
candidates if they scored the same grades with men. Similarly, for positions that require a qualification more than a diploma and for decision-making positions, 30% has to be reserved for women and they could compete for the 70% with men though women are given preference if they score equally with men.

Thirdly, in case of promotion and transfer, 10 points and 5% will be added on the total score of women employees respectively provided that they fulfill the minimum requirements and if the transfer is requested for the same type of work, or to other offices with the same position, or to remote areas. However, if the reason for the transfer is marriage or health problems, 10% has to be added for women applicants.

Fourthly, with regard to training of civil servants, the regulation provides two categories: pre-employment and post-employment trainings. In particular, for pre-employment trainings, 30% is reserved for women in disciplines such as teaching, nursing, law, agriculture, development etc. Likewise, the regulation distinguishes the post-employment trainings into short (1-3 months), medium (3 months-1year) and long-term training programs (over 1 year). In short-term training programs, women get 20% reservation while they could compete with men for the rest of the 80%. In medium-term training, programs, 25% and for long-term trainings, 30% is reserved for women while they could compete with men for the remaining places.

Finally, with regard to evaluation of employees’ performance, the regulation valued maternity leave. That is to say, if women are absent for reasons related to birth of a child, they either would be assumed to work for 6 months or their previous grade would be taken into account. It has to be noted that job performance is one of the criteria in the selection process for trainings or scholarships. Hence, this will help many women to participate in trainings and further studies. In brief, although both the federal government and the Afar regional state take their initiation to incorporate affirmative action programs in their legislation, the Tigray regional state goes further in order to make the constitutional commitment a reality. Such a difference could be explained by a number of factors such as past experience of the Tigray people in the armed struggle, having better
implementing capacity, role of the political party TPLF (Tigrayan People’s Liberation Front) etc.

5.4 Conclusion

From the above discussions, it is noticeable that women’s position in various realms of life is insignificant due to discriminatory practices that were deeply rooted for centuries in society. Evidently, the impact that such discriminatory practices have generated upon women could not be altered within a short period of time solely by the implementation of non-discriminatory laws. It is obvious that the gender-gap persists throughout the society for generations unless endorsed by preferential treatment for women. As noted earlier, the existing social, cultural, economic and political inequalities urge the government to introduce affirmative action measures in order to accelerate gender equality and justice. Such positive measures are adopted to remedy the effects of prior inequalities resulting from discriminatory practices against women. It is also undeniable that affirmative action by making over half of the population into the productive position brings about a social change to the country. In other words, in a society where there is unequal status between the sexes, affirmative action could be used as a strategy to enhance equality among the sexes by acknowledging differences and ensuring equality of opportunity. Affirmative action could, therefore, be considered as a major tool of promoting women’s economic, political and social empowerment by preventing discrimination and bringing about justice in public institutions.

Affirmative action programs are not seen as a deviation from the right to equality guaranteed by Article 25 of the Constitution. Formal equality and substantive equality are complementary, and both contribute to the full and equal enjoyment of all rights and freedoms. In order to realize the equality of women, in fact, circumstantial situations that relegate them to inferior positions have to be taken into consideration. As mentioned earlier, the historical legacy of inequality and discrimination suffered by women in Ethiopia has created an unequal playing field, in which formal equality per se would not be sufficient to bring about equality. Hence, taking account of the current status of women in Ethiopia, the government introduced the right to affirmative action in the
constitution to accelerate the real equality among the sexes. Affirmative action programs, therefore, could be seen as an essential means to attain equality, not as a limitation to the right to equality. Nevertheless, there are other barriers that hinder the successful implementation of affirmative action in practice. The next chapter evaluates the practicability of affirmative action in selected institutions.

Chapter 6

6. Implementation of Affirmative Action in Higher Education and the Civil Service

Despite favourable policies introduced by government to improve the status of women, their implementation has encountered serious setbacks. This is because the full realization of women’s rights not only does require law and policy reforms, but also require effective institutional mechanisms necessary for implementation which is hardly the case.

In order to bridge the gender gap in education and employment, a number of programs were adopted at higher education institutions and the civil service. This chapter describes how these institutions have taken responsibility in implementing affirmative action programs. However, it should be pointed out that this study could not conduct any systematic evaluation of the impact of affirmative action on academic or civil service performance due to the obvious lack of recorded data and statistics on beneficiaries of affirmative action.

This chapter also examines the current practice of affirmative action in higher education and employment institutions. In particular admission policy, department placement and post-admission activities are examined in this chapter in light of the overall effect of affirmative action programs in higher education. Moreover, in the employment sector, it explores the policy and practice of vacancy advertising and recruitment of applicants along with other human resource activities of personnel. This chapter also assesses the
attitudes and perceptions of affirmative action and investigates the prevailing factors that could impede effective implementation of the programs under review. The findings from the questionnaires and the interviews will be presented simultaneously. Questionnaires both closed where respondents are required to select and mark the applicable answer and open where respondents are required to answer the questions in their own words as well as interviews were used in data collection. The data which were gathered through questionnaires and interviews were carefully scrutinized. All major stake holders were represented in the sample, including parliamentarians, employees, lecturers, students, members of women’s groups as well as heads of women’s departments.

The questionnaires and Interviews

A four-part questionnaire was designed for gathering data. Part one was designed to obtain background information of the respondents such as gender, age, qualifications and occupation. Part two contained questions related to their understanding and relevance of affirmative action. The third part consisted of questions related to the effectiveness of affirmative action in terms of implementation in the respective institutions. Questions related to constraints and challenges facing affirmative action at the respective institutions constituted the fourth part. Questionnaires were distributed to instructors, students, employees and parliamentarians.

Accordingly, questionnaires were distributed to 530 respondents, out of which three hundred and sixty were returned, which make a 67.9 % response rate. The questionnaires were distributed to instructors, students, employees and parliamentarians. Of the total of 247 copies of questionnaires distributed to parliamentarians and employees of the civil service both at the federal and regional government levels, 65 and 105 were returned from each group respectively and were used for analysis of this study. In the case of the instructors and university students, 78 and 112 copies respectively were properly filled and returned for analysis out of the 283 questionnaires originally sent to the groups. From a total of 360 respondents, 213 (59.1 %) were women and 147 (40.8 %) were male. In analyzing the data, descriptive methods and percentages were used. It was analyzed and interpreted by way of transcribing and summarizing interviews. The interviews were conducted with the respondents at their respective institutions. The interviews were
carried out to further clarify respondents’ attitudes and perceptions of affirmative action. Open-ended questions were asked to all interviewees where they were encouraged to freely communicate their responses (See Annex 2).

Selection of Institutions

This study was conducted among regular students in higher education institutions and permanent employees in the civil service. Four higher education institutions were selected to form the sampling frame, namely universities and colleges that were established several years ago and newly established institutions. These are located in the federal and regional governments. At the federal level, the Addis Ababa University (AAU), and the Ethiopian Civil Service University (ECSU). Moreover, the Mekelle University and the Samara University both based in the respective capitals of the regions are selected at the regional level. Three institutions namely, the Federal Civil Service Commission (FCSC), the Ministry of Capacity Building (MCB) and Ministry of Foreign Affairs (MFA) were selected as far as employment is concerned.

The AAU, formerly known as Haile Selassie I University, is one of the largest higher learning institutions in Africa that was established under the Ministry of Education in 1949. In July 1950, it was established as an autonomous higher learning institution as ‘The University College of Addis Ababa’. The AAU was the only higher institution in the capital, Addis Ababa, until the 1990s. The ECSU which was formally established by the Council of Ministers Regulations No.3/1996, aimed at reducing the shortage of human resource in the civil service both at the federal and regional governments. Accordingly, students at the ECSU are predominately selected by their respective regional governments as the university is mainly established to abridge disparities among regions in education and training. In addition, gender and preferential treatment to disadvantaged regions have become the major agenda of the ECSU in the process of selection. Likewise, Mekelle University that was established by Regulations No. 61/1999 after the merger of the two former colleges: Mekelle Business College and Mekelle University College, is located in Mekelle, the capital of the Tigray regional government.
Semara University is one of the most recently founded higher institutions in the capital of the Afar regional government.

6.1. Assessment of current practices

This section explores how gender-based preferences are operated as they are actually administered in higher education settings. The study provides an overview of how the Ministry of Education implements affirmative action on admission into higher institutions nationwide. It further investigates pre-and post-admission initiatives implemented by individual universities and consider various institutional and legislative aspects since 1995. It has to be noted that one of the critical issues is the extent to which affirmative action policies have actually been implemented at higher institutions. The case studies involves for the amount of change that occurred on behalf of female students on each institutions from 1995 to 2010.

6.1.1. Higher Education: An Overview

The Ministry of Education (MOE), as reviewed in chapter four, is a federal institution mandated to oversight and regulates the entire higher education sector. The MOE formulates educational policies and supervises the standards. It also prepares national examinations, establishes higher education institutions, sets the intake cut-off points and assigns students to the different tertiary educational institutions across the country each year. Higher education in Ethiopia includes institutions with three, four, and six year undergraduate programs depending on the nature and type of the disciplines, as well as those with advanced degree programs through the two year Masters and three year PhD level (Ministry of Education Annual Abstract, 2009/10).

Since 1991/92, the MOE has launched a different admission’s scheme for female students with an intention to improve access to higher educational institutions. In this procedure,
the MOE allocates places to female students on a reduced point basis at tertiary level. The MOE sets different intake cut-off points for male and female students. More specifically, between 1991 and 2004 academic years, the MOE had adopted a system of lower admission grade pointes for women based on the results of ESLCE (Ethiopian School Leaving Certificate Examination), a national examination held annually in Ethiopia as a prerequisite for entrance to all higher educational institutions at an undergraduate level. This examination (ECLCE) was often taken by students at the last year of their secondary school education on which those who are eligible for admission to higher institutions are selected.

Accordingly, in the year 1991/92, female students with 3.2 and 3.0 Grade Point Average (GPA) could register for degree and diploma programs respectively although male students were required a minimum GPA of 3.4 for the degree program and 3.2 for the two year diploma program. However, some inconsistency was observed in the course of the implementation of such admission schemes throughout the years. To mention a few, in 1992/93, 1995/96 and 1998/99 academic years, similar intake cut-off points were applied for both male and female students in admission (See Annex 3, Table 1). This demonstrates that the MOE had lowered the intake cut-off points for females given the fact that adequate seats were available in higher institutions. In this regard, one admission officer at the MOE alleged that female students only received preferences if there are available places in higher institutions.

Since 2004, candidates who wished to join higher education have been required to pass the Ethiopian General Secondary Education Certificate (EGSEC), attend the two year higher education preparatory program, and score a good grade on the Ethiopian Higher Education Entrance Qualification Certificate (EHEEQC) in order to be assigned by the MOE to different higher educational institutions.

It should be noted that higher educational institutions have played a significant role in pioneering affirmative action programs though the manner in executing them has varied across institutions. This discussion focuses on three major affirmative action programs that higher educational institutions have used as strategies to increase female enrolment. These actions include: preferential admission, preferential department placement and
post-admission programs. While all three affirmative action interventions differ in their specific objectives, they aim at increasing the enrollment and participation of female students in academia.

The reservation of seats or preferential admission for female students has the broader objective of facilitating the admission of qualified female applicants with lower points of entry than those of male applicants. Likewise, the objective of preferential department placement is to increase the number of female students in traditionally male-dominated fields like the science disciplines. Post-admission programs that specifically target female students are the third type of affirmative action. These programs have provided special assistance to retain female students in undergraduate studies. These programs include: tutorial classes, extra lessons and financial assistance. The post-admission programs mainly aim at reducing the drop-out rate and enable female students to complete their studies. The financial assistance has specifically favoured women who are constrained by economic pressures to pursue their studies.

6.1.1.1 Admissions

Higher institutions have adopted preferential admission policies and reserved places for female candidates in order to increase the enrolment and participation of women in the academia. In doing so, a significant number of female students have gained admission through special preferential programs by which institutions were made accept applicants on reduced entry points (See Annex 3, Table 2). By way of illustration, the Addis Ababa University’s (AAU) legislation requires the academic Senate or the University President to issue guidelines on special admission criteria that would enable disadvantaged groups to enroll in the programs of the University (AAU 2007: Article 61). The University implemented a special admissions program to increase the representation of ‘disadvantaged’ students. However, the legislation does not define the phrase ‘dis advantaged groups’. As noted by Mohammed Habib, Ex-Administrative Vice President of the AAU, the AAU admission policy seeks to provide access to persons who have experienced educational and/or social disadvantage and to address the
underrepresentation of specific community groups in higher education to which women are entitled to the programs.

Accordingly, the AAU set aside a certain percentage of seats to women in some disciplines where they are thought to be underrepresented taking account of the availability of places in the departments. For instance, in 2005/06 academic year, the College of Social Sciences has reserved seats for women in various fields of study. More specifically, the Accounting Department reserved 20%, the Faculty of Law 15%, the Business Education Department 8%, the Economics Department 20%, the Foreign Language and Literature Department 10% and the Library and Information Science Department 7% (AAU Registrar Office: 2007). Conversely, Tewodros Seyoum, Ex-Registrar of the ECSU, claimed in an interview that the civil service university does not reserve places for women, neither in admission nor in department placement for the reason that students are selected and assigned to various disciplines by their respective regional governments. It is, however, presumed that the regional governments have taken the gender issue into account while selecting candidates to join the university.

The Mekelle University’s legislation has also strongly endorsed the importance of affirmative action in admission. According to its policy, special attention is given to disabled students, women and to those who have completed secondary school education in a disadvantaged region, and who are natives of the nationality of the region or those from a nationality whose participation in higher education in general has been low in the past (Article 7.3.2 (1)). Further, the Mekelle University’s legislation has reserved 25% for women in each department while women could also compete for the remaining 75% with men (Article 11). On account of this, it can safely be said that women’s enrollment has steadily increased in the following years. For instance, in the 2009 academic year, out of 6000 students admitted at the Mekelle University 3600 were women which demonstrate an unprecedented rise to 51% (Mekelle University Women’s Affairs Department, 2010).
Likewise, the Semara University’s legislation has introduced affirmative action measures in giving preference to women, disabled people and people from marginalized groups in the admission process (2007: Article 65). Hence, women’s enrollment in the university shows increment gradually. For instance, in the academic year 2009, from the total of 1500 students admitted in Semara University, 500 were women (Semara University Women’s Affairs Department, 2010).

As has been noted, the application of preferential admission criteria in higher institutions depends on the number of applicants in each academic year as well as the level of performance in relation to minimum entry qualifications. Although, in an effort to increase the number of women in higher education, the institutions under review have adopted preferential admission policy for women students, the respective departments will decide on the intake cut-off points in each academic year taking account of available places. All in all, through preferential admission policies, women are admitted to higher institutions at considerable rate. For instance, the participation of women rose from 14.4% to 32.3% from 1995 to 2006 in higher education (Annual Statistics Abstract, 2007). Looking back at the position of women in education, the current educational achievement is significant since the introduction of affirmative action programs. In sum, affirmative action programs that give preferential admissions have been duly credited for increasing women’s enrollment in higher educational institutions as can be shown in the selected institutions.

### 6.1.1.2 Department placement

In the Ethiopian higher institutions traditions, students’ academic performance plays a major role in the placement of students to various studies. As a rule, students are often distributed to different fields of study on the basis of their grade point average achieved at their first year study of completion. The Ministry of education allocate students to various faculties and eventually further allocated to the various specializations on the basis of mainly their academic performances although gender is often taken as a plus-factor to the principle of merit. It has been noted that placements to all regular
undergraduate programs are processed through the Ministry of education until such time as the Addis Ababa University (AAU) establishes its own admissions policies and procedures (AAU’s legislation 2007: Article 58.1). According to the AAU’s legislation, the Admissions and Enrollment Committee makes arrangements to promote diversity in admission and assesses intake capacity against available human and material resources (Article 17.1.1-3). Moreover, the AAU’s legislation states that the Admissions and Enrollment Committee endorses the criteria for special admissions to individual programs which are developed and recommended by the faculties’ respective academic commissions (Article 58.3).

In principle, placement to various studies is done depending on the students-grade point average and choices. However, in practice many women could not join the specialization of their first choice due to lack of the minimum grade point average for the respective studies. In order to overcome such drawbacks, the AAU set the minimum cumulative GPA for female students taken into account the total number of students reserved in each departments since 1997. In an interview with Getachew Alemu, an officer at the office of the registrar of the AAU, in the academic year 2005/06, from the total of female students who applied to join the College of Social Sciences and Humanities, only 10 students were assigned by their first choices, 25 students were assigned to their second choice and 30 students were assigned to their third choice of different studies. Getachew further noted that the requirement of high GPA and unavailability of adequate places in the respective departments constitutes the major factor that would deprive female students from joining the department of their first choice. In such circumstances, female students would be forced to be assigned to their second or third choices of studies that they do not want to join.

Given the underrepresentation of women in traditionally male-dominated fields of specializations, there have recently been significant steps taken by the MOE to ameliorate the discrepancies between male and female students. As explained above, in an effort to raise female enrollments, the MOE uses preferential distribution of female students to different disciplines. In this process, female students are allocated to these streams of
study with reduced GPA. Alongside, Mekelle University’s legislation has introduced affirmative action measures in giving preferences to women, disabled students and students from relatively disadvantaged regions in placement to different departments (Article 7.5.1). In this regard, Tigist Araya, the Head of Women’s Affairs Departments at the Mekelle University, noted in an interview; that preference is given to women in department placement taking account of their academic performances. She further explained that assigning women to their first choice would be less likely due to the disproportionate number of applicants to the limited availability of places in the departments. As a result, students have been assigned to studies of their second and third choices. In fact, students who are not satisfied with their placement could appeal to the higher authorities of the university (Article 8.2.3). However, in practice once assignment to various disciplines is done, students rarely appeal against the decision. This is because they think that the decision will not be reversed.

Although the proportion of women in the natural sciences discipline has increased slightly from 4% in 2000 to 8% in 2009, the gap still persists (Mekelle University Registrar Office, 2010). During the interview, Tigist Araya pointed out that most women opt for different fields of study notably pedagogy, nursing and secretarial science which is affected by gender-role stereotyping of career. She further claimed that women were largely predominated in the field of education: they represented more than 70% of students in this field. However, nationwide, there has been a consistent increase in women participation in the traditionally male-dominated fields over the past decade. In 2005, for example, 18 % of first degree in computer sciences at universities was earned by women, 12 % of first degree in engineering and 8 % in medicine. In 2007/08, women’s enrollment in natural science has even increased to 22% (Annual Educational Statistics Abstract, 2009). By the same token, Meberat Tekelemariam, gender office coordinator in Semara University, noted in an interview that Semara University assigned female students to their choice of specializations taking account of their academic performances. Evidently, the quota reserved for women and preferential department placement have contributed to the increase of women’s enrollment especially in traditionally male-dominated fields (See Annex 3, Table 3).
6.1.1.3 Post-admissions

Despite affirmative action policies, the researcher’s observation and study shows that the dropout rate of female students in higher learning institutions is high compared to their male counterparts. One possible explanation for a higher rate of dropout of female candidates is that students do not get adequate counselling and tutoring during their stay in the institutions. As noted by the gender officers in the respective universities, affirmative action programs at higher educational institutions tend to focus on entry with limited post-admission follow-up to retain students in the academia. Consequently, female students are likely to encounter unfortunate experiences such as high-dropout rate, repetition and withdrawal. For instance, the dropout rate at the AAU for the academic year 2002/03 was 8.6% and 12.9% for men and women respectively. In the academic year 2003/04, the dropout rate was 9.2% and 14.5% for men and women respectively. Similarly, in the academic year 2004/05, the dropout rate for women students was 16.3%, while it was only 6.4% for men (AAU Registrar Office, 2006). As noted earlier, it is clear that though the enrollment of students in higher learning institutions has shown improvement over the past few years, the number of dropouts is parallel to enrollment. As a result, the composition of women graduates from higher institutions remains still low (See Annex 3, Table 4). Nevertheless, the year 2010 has been marked as the highest in the numbers of graduates in which 200,000 students have graduated in different disciplines and levels from AAU during its 60 years of existence according to the Registrar of AAU. In 2009/10 which indicated the landmark case during the history of the university shows that in undergraduate programs from the total of 20,701 students 6,478 were female and in graduated studies from the total of 6,709 students 654 were females (AAU: 2011). This shows women, relative to men still remain underrepresented in higher education.

In the meantime, for graduation rates increment and dropout rates decrement, some institutions have arranged special programs for women students. Orientation, counseling, tutorial and extra lessons could be cited as relevant examples. It is noticeable that higher institutions often organize orientation programs in welcoming students to college life and
campus culture in order to sensitize them with their new environment. In the Ethiopian cultural context, orientation programs of that kind have a significant impact especially for women from the rural areas who are often confined to deep-rooted cultural norms and traditional practices that inhibit their exposure. In light of this, it is essential for institutions to organize a series of orientation programs for new female students which would help to familiarize them with the immediate learning environment and the internal regulations of institutions which could further have an impact on their academic performance and retention. Moreover, the practices of tutorial classes have largely been developed in response to the need to retain students in the academia so that the number of early student dropouts on academic grounds can be minimized. Tutorial classes that are part of a regular course in the curricula are supplemental to a large lecture course, which gives students the opportunity to discuss the subject and additional readings in smaller groups. Tutorials, which are taught in small groups by instructors in the student's field of concentration, are part of a learning process often in the undergraduate program. One senior lecture at the AAU explains the advantages of tutorial classes as follows:

Tutorials encourage students to develop more scholarly approaches to their academic disciplines. It is more interactive in that the tutor gives individual attention to the students for ensuring a greater participation, notably females. Although tutorial sessions are not compulsory; but very important as it provides learners with institutional attachment, opportunities for making peer group and academic supports from the tutors.

Nevertheless, the interviews with officials and students indicate that giving tutorial classes has always been considered a challenge. As Abay Akemachew, Head of the Center for Gender and Development (CGD) in an interview at the ECSU indicated that the increasing number of students joining higher education institutions in recent years has burdened the workload of instructors so that giving tutorial classes on a regular basis becomes difficult as it would involve commitment of the respective departments in particular and the university staff in general. Besides, the optional nature of tutorial arrangements led the program to be seen as voluntary in nature. She further noted that students would not be able to attend tutorials in all subjects in which they face difficulties, but only in the subject matter whose instructor would volunteer to give the tutorial classes. For instance, in the academic year 2009, the ECSU organized tutorial
classes for women only in two courses in the department of IPMDS. In addition, according to Abay, the lack of awareness, commitments, and sufficient budget are factors that hinder the effective implementation of tutorials. Abay emphasized that taking account of the work load of instructors, additional incentives would be paramount to manage the program. Consequently, despite high interest for tutorials among students, institutions are obliged to organize only for few courses. This has been observed from the survey conducted to assess the attitudes of students to tutorials in 2009 by CGD of the ECSU. The survey shows that from the total of 100 students interviewed, 90% of them are in favour of attending tutorial classes.

On the contrary, lack of attendance by recipients constitutes another factor for institutions not to arrange tutorials for women. In this regard, Tigist Araya, Head of the Women’s Affairs Departments at the Mekelle University, noted that from the total of 20 tutorial sessions organized in 2003, only 3 % were attended by female students. She further claims that the English Language Improvement Center for Women established at the Mekelle University in 2004 was closed due to lack of sufficient number of students. With respect to the possible reasons, Tigist claims:

Some students perceived tutorial classes as the one arranged only for incompetent and weak students because of this they decline to attend tutorial classes’ fear of having low self-esteem. In addition, the fact that attendance at tutorial sessions is not compulsory, the tutorial sessions is not generally well attended by the students. As far as I know, although tutorials were poorly attended, it did elicit positive responses from those students who did attend.

Students complained about the scheduling of tutorial classes. A female student commented the following:

Because tutorial classes are arranged while exams were approaching, it debarred us from having free time for self-study and preparations for examinations. I believe arranging tutorial classes consistently and in an organized manner would have a positive impact on academic performance.

Respondents were asked whether tutorial programs are implemented in their respective institutions. 54.2% of respondents declared that no such programs existed at their
institutions. Twenty-five percent maintained that occasionally their institutions conduct tutorial programs while 16.6% responded that they were unsure whether such programs have existed. Only five percent claim that their institutions regularly arranged tutorial classes for students. In sum, the majority of respondents indicated that tutorial programs did not exist at their institutions. It is obvious from the responses that consistent tutorial programs were not implemented or were implemented irregularly. Hence, many students were unaware of it. Under these circumstances, it would be naïve to expect affirmative action to be sufficiently successful. The post-admission programs have been, therefore one way of encouraging female students to finish their studies. In short, affirmative action interventions in various forms indeed increase female student’s enrolment in tertiary education. It is a fact that as women’s educational attainment has increased, more women have moved into the labor market both private and public. Below, the implementation framework for affirmative action in employment will be examined in selected institutions in order to demonstrate what the picture is like.

6.1.2 The Civil Service

The FDRE Constitution as reviewed in chapter five emphasizes the need for affirmative action for women, though it has remained vague to provide a fairly detailed guidance with respect to implementation. However, in each of the institutions under review, the Constitution is considered as the source of the government’s authority to implement affirmative action in the civil service. The federal civil servant proclamation which is promulgated by the parliament provides a provision for affirmative action programs in the civil service. The Federal Civil Service Agency (FCSA) frames directives and guidelines about how to implement affirmative action in the civil service. Individual ministries, departments and public agencies are assumed to follow those guidelines and issue the necessary executive directives. The FCSA is responsible for implementing affirmative action because it is in charge of personnel management practices such as appointment and promotion, and certification for pension and disciplinary matters for the entire civil service. To that effect the FCSA enacted implementing guidelines for the Federal Civil Servant Proclamation No. 515/2007.
In principle, affirmative action policies in the employment sector intend to overcome the effects of past discriminations against women and make a positive and continuous effort in their recruitment, promotion and transfer by removing any barriers that limit the professional and personal development of women. The question then arises as to how institutions have implemented affirmative action in the civil service. For the purpose of this study, affirmative action programs that aim at increasing the number of women in employment could be classified into two broad categories: pre-employment and post-employment phases. The pre-employment phase involves activities undertaken by institutions in view of hiring employees such as advertising, selecting and hiring. The post-employment phase includes schemes designed to improve the skills and knowledge of employees through other human resource activities such as training, scholarship, promotion etc. This study examines the existing institutional statutes and plans of action. In line with this, a number of institutions have been selected by the researcher from both the federal and regional governments. At the federal level, three institutions, namely the Federal Civil Service Agency, the Ministry of Foreign Affairs and the Ministry of Capacity Building have been selected to examine their role in the advancement and promotion of women in enhancing their participation in the civil service. At the regional level, the Bureau of Capacity Building that aimed at building citizens’ capacity in general and women in particular has been selected. Because of a poor recording system in hiring employees, this study mainly depends on information gathered through interviews with respect to the implementation of affirmative action programs in the process of employment in the institutions described above.

6.1.2.1 Advertising

What are critical in implementing the goal of affirmative action are the advertising procedures. In Ethiopia, job opportunities are usually advertised on newspapers, televisions, radios and billboards. One way of increasing the number of women in employment is through advertising job openings that aim at women audiences. In this regard, employers are expected to advertise their job and training vacancies as widely as
possible so that it is likely to reach female applicants who will have an opportunity to apply. Basically, the role of a job advertisement is to attract the attention of job seekers. The question then arises as to whether the advertising procedure in the civil service is directed and made to reach potential applicants, that is, women. Job advertisements may also encourage applications from groups that are underrepresented in the institution. Such advertisements may provide preference for women applicants. For instance, in South Africa, posts have to be advertised to reach the entire pool of potential applicants, especially the historically disadvantaged (South African Public Service Regulations 2001, Part VIII, C2).

Although there are different methods of advertising job vacancies, advertisement in the Ethiopian civil service can be categorized into two types: unfocused methods and focused methods. The “unfocused” method of advertising often includes the phrase “No difference is made between men and women applicants”. In the unfocused methods institutions use the “welcoming” way of advertising. It is more of a neutral form of advertising in which applications are welcomed from all qualified persons. Such type of advertisement might be to encourage everyone equally rather than focusing on a particular group. An employer’s advertisements might state that “applications from all men and women are welcomed”. Such unfocused methods cannot be said to favour any person or groups. It simply encourages applications from both men and women candidates.

In the “focused” methods, institutions are often keen to take affirmative action to attract more women job applications by using the “preferential” method of advertising. In the “preferential” method, the institution would add the following paragraph to the text of the advertisements “both men and women can apply for the job though we would particularly encourage applications from women”. This type of advertisement does not discourage applications from men but rather includes statements that encourage women to apply. Under such type of advertisement, women applicants will receive preferential treatment in the recruitment process. Opponents of affirmative action have also argued that such kind of statements in advertisements could hinder potential men applicants from
applying to a certain job. Government regulations, as reviewed in chapter five, required institutions to clearly include the phrase “women applicants are encouraged” in their job advertisement. Specifically, the sample attached to the federal directive on human resource selection and recruitment requires employing institutions to use “focused” methods of advertisements in order to encourage women applicants (2008:23). A number of respondents to the interviews believe that the “focused” type of advertisement encourages women job seekers. In connection with this, Nureya Mohammed, Directress of Policies and Affirmative Action in the Ministry of Foreign Affairs, claimed in an interview as follows:

A focused method of advertising broadens the opportunities for women. If one wants to apply affirmative action, it is more appropriate to start at job advertising. One has to hold the door open for potential women applicants. I believe applications from women have to be welcomed.

Shewa Amin, gender expert at the Ministry of Foreign Affairs commented as follows:

The focused type of job advertisement encourages women to apply and increase the possibility to be selected. It encourages women to take part in the competition discarding matters that otherwise debarred them from competing in the past. I believe the method of advertisements in the civil service have a role in limiting or encouraging potential women applicants for a given job.

In sum, the methods of advertisement that an institution utilizes needs to vary depending on the availability of women employees in a given institution in general and the position in particular. Since the directive does not oblige institutions to advertise as per the sample, employers have a choice of using either “unfocused” or “focused” methods of encouragement. In light of this, the “unfocused” method might be fair where women employees are relatively sufficient in number. The “focused” type of advertisement is more appropriate in sectors of the civil service where women are underrepresented. It has to be noted that women in the Ethiopian context are vastly underrepresented in many occupations. In this regard, such affirmative action policies would help to modify the advertising process in institutions in which women are more likely to pay attention to job
opportunities. This, however, is only the initial step to ensure that women have an equal employment opportunity. After advertising the next step relates to screening of applicants and recruiting by institutions.

### 6.1.2.2 Recruitment, Promotion and Transfer

Regulations of affirmative action policies have modified the hiring process such that employment opportunities are made available to women job seekers. Accordingly, employing institutions are required to modify their recruitment methods so that there is a better probability to be inclusive to women job seekers. These modifications could lead to a possible increased job opportunity for women. Needless to say, selecting and recruiting the right people to the right job is of paramount importance to the success of the workforce. In such processes, employing institutions have the legal responsibility to ensure that recruitment is carried out without discrimination on grounds of sex, ethnicity, disability, age, religion or belief, or any other unjustifiable criteria (Federal Civil Servants Proclamation, 2007: Article 13(1)). Once the applicant’s pool has been approved, employing institutions then screen and determine the person that best fits the available position. In this regard, institutions establish a minimum education level for a particular job opening.

As reviewed in chapter five, the Ethiopian system of recruitment applies a different procedure. According to the federal directives on human resource selection and recruitment, preference is given to women candidates if they score equal points at competitions with men or at the maximum a 3% difference (2008: Article 5.6.1(b)). Affirmative action was to be considered only if competing candidates have equivalent qualifications. This means, suppose there are two competitors, a man scoring 85% and a woman scoring 82%, the latter would be given a preferential treatment. In this case, the woman is preferred because the difference is not more than 3%. This mainly focuses on the initial stage of recruiting employees. In this regard, it has to be noted that professional qualification remains the basis for selection of applicants while gender might be taken into consideration at a later stage as a plus factor to performance (Federal Civil Servants Proclamation; 2007: Article 13(2&3)). Affirmative action, therefore, does not violate the merit principle.
Instead, it provides an opportunity for more qualified women to compete for jobs. Nevertheless, such a practice could still have detrimental effects for women. Suppose there are eight vacancies or opportunities for recruitment or promotion in a given year, if none of the women candidates have achieved to score equal points as their men counterparts in the examination for recruitment or promotion, affirmative action will not come into operation. Consequently, only men candidates will access to be employed or promoted in each circumstance and women candidates will be disregarded.

Moreover, in the selection and hiring of individuals, officials at human resource departments are not strictly abided by the rules of the legislation in applying the 3% for women applicants. In relation to implementation of affirmative action in recruitment, one official at FCSC who does not want to disclose his name stated:

We really do not apply affirmative action for women in recruitment consistently. In the process of selection of candidates, we only considered qualifications.

Furthermore, during one of the interviews, a senior human resource official at Ministry of Capacity Building, who does not want to reveal his name made the following comment:

The consideration of the 3% for women in hiring is a forgotten issue. We just apply in rare cases when it is raised by any members of the hiring committee.

The 3% actually limits institutions to extend the preferential treatment for women at large and sometimes it becomes difficult to decide on applicants due to a small range of difference among them. In this regard, Tadesse Belachew, an expert in Afar Capacity Building Bureau had this to say during an interview:

It is very hard to select a woman from the pool of candidates….what if their difference is 3.2%, shall we select a man? I believe that the 3% is nominal as it hardly encourages women to apply. The legislation lacks flexibility.

It has been widely suggested that the 3% difference does not enlarge women’s opportunities in the labour force. In an attempt to resolve such barriers, the Ethiopian Ministry of Foreign Affairs and the Tigrary Capacity Building Bureau have intended to
raise the Three Point to Five, although it has not been yet ratified and has become enforceable (Draft legislations 2008 and 2007 respectively). Even if the face value of this measure shows increment, the mere fact of raising by two points will not have any meaningful impact in enabling women to compete and further changes their position in the long term.

For the purpose of this discussion; the criteria announced by employing institutions for vacancies could categorized into core criteria and supportive criteria. While the core criterion is the minimum academic qualification required for a certain job, the supportive criterion related to the work experience. It has to be noted that this discussion is neither intended to diminish nor to lessen the value and purpose of work experience. In the civil service, both the core and supportive criteria are considered as part and parcel of the job, and be fulfilled by all job-seekers irrespective of their gender. In fact, these criteria play a decisive role in selecting an employee who is suitable for a given job. However, the researcher believes that a distinction has to be drawn between the supportive and core criterion in enhancing women’s employment. This is because the supportive criterion becomes an obstacle for potential women candidates for a given job. In other words, the supportive criterion, which has a greater credit in competition, indirectly discriminates potential women applicants as the door is not opened. In this regard, one informant in the Ministry of Foreign Affairs said that if a certain job demands a university degree and ten year work experience, although many women of first degree holders’ could apply for the position, it would be difficult for them to fulfil the stringent supportive criteria of years of work experience, provided that the changing participation of women in education is a recent phenomenon. With regard to recruitment and selection, the South African White paper on public service training and education also makes the observation that overemphasis on formal qualifications and experience, to the detriment of previously disadvantaged groups appeared to hamper the effective implementation of affirmative action program (Section 2.2.7.2). Moreover, in determining whether a person is suitably qualified for a job, an employer may not unfairly discriminate against a person solely on the grounds of that person’s lack of relevant experience (South African EEA, 1998: Section 20 (5)).
In this regard, many interviewees believe that the supportive criterion does not encourage women to apply; it is rather against the interest of potential women applicants. One senior female government official who declined to be named claimed:

It is a façade affirmative action that is not intended to improve the situation of women. It is rather just an ostentatious preferential system. It is not more than a verbal commitment. In short, it is a form of tokenism.

Another informant explained the situation as follows:

Affirmative action is like a “bottleneck”. Surprisingly, much emphasis is given for work experience in selecting candidates not only in recruiting but also in later stages of employment such as in accessing to training and promotion. And it has consequential impact in debarring women applicants to a larger extent which ended up in a smaller percentage of women’s participation in the civil service.

Insufficient pool of women applicants are observed in various job advertisements. In this regard, Dereje Tegeyebelu, Head of Human Resource Management Department at the Civil Service Commission made the following remarks:

In my opinion, the insufficient pool of women applicants impedes the effective implementation of affirmative action. Such insufficiency is attributed to a number of factors, including lack of work experience, cultural and attitudinal perceptions towards women, engagement in household activities that could hinder women from watching an advertisement and resistance by partners, if especially the job would involve some fieldwork. Generally, the poor educational background of the majority of women has left them at an extreme disadvantage related to men regarding formal qualifications and skills, which ultimately debarred them from applying to job vacancies.

It is noted that a smaller percentage of women than men do apply for job vacancies in the institutions. For instance, in the Ethiopian Ministry of Capacity Building job vacancies that were advertised in September 2008, a total of 300 applicants were registered out of which only 20 were women. Likewise, since 2002, from the total of 30 women applicants, only 16 were hired by FCSC in different positions for the subsequent 5 years until 2007 (Human Resource Department, 2008). Similar trends have existed in both the
federal and regional governments’ institutions although the matter becomes worse in the later. For instance, in the Afar regional government Capacity Building Bureau from 2000-2005, 22 women applied for a job, 12 were short listed and 8 were hired. Similarly, in Tigrary Capacity Building Bureau, in 2005 from the total of 60 registered applicants, only 8 were women (Tigrary Capacity Building Bureau, 2006). Indeed, if a small number of women apply for jobs, an even smaller number of them will have a chance of securing the position. Hence, women in the civil service holding higher positions remain only 6.4% (Annual Personnel Statistics Abstract, 2007). This effect was partly due to the fact that women were less likely than men to have long years of experience and a university degree. For instance, in the Ministry of Foreign Affairs, only 8% of women with more than 15 years of experience possessed first degree in comparison with men, at 38% (Ministry of Foreign Affairs Human Resource List, 2010).

It is widely believed that promotions and transfers provide employees with the opportunity to develop their skills. However, women are unlikely to get such opportunities in the civil service. Discrimination against women in promotion is often based on the common perception that “women are not capable of handling stressful situations” and further claimed that “women tend to be emotionally influenced when it comes to taking decisions as high ranking personnel in the public sector” (Hoobler et al; 2009: 943). Such perceptions have resulted in depriving women employees’ promotion opportunities. Here, it is worth mentioning Almaz Haile’s case on promotion. She states:

“I have been working in the Construction Bank of Ethiopia for over 20 years and competed with a man for a higher position in my department. Later, the position was granted for a man who has even less academic qualifications and work experience than me. I was denied the position on the ground that the position is difficult for women. You know........it is for the sole sake of my gender. It is because I am a woman. Finally, I resigned and started a new job in a non-governmental organization.

The interview conducted during this study indicated that some government officials are against preference for women in promotion. One official in the FCSC, who asked not to be named, indicates:
It is inappropriate to give preference for women in promotion once they are hired by institutions. How many times should we apply this affirmative action?

Similarly, an official from the Ethiopian Foreign Ministry pointed out:

It is improper to consider affirmative action on promotion. It is believed that a woman who could reach at this stage should be able to compete with other applicants on the basis of merit. Affirmative action has to be given only to those women at an earlier stage like hiring. I think the best person should be promoted irrespective of gender.

A hiring official at the FCSC allegedly indicated as follows:

Job promotion should generally depend on acquiring qualifications and experiences in order to be able to perform a more advanced job. I believe everyone should compete for higher position based on merit alone.

The other crucial area where women employees need preference is in the transfer of employees from one institution to another or from rural areas to urban areas. It is clear that transfer to urban areas enable women employees for better opportunities in that they are be able to advance their studies. However, it is only the Tigray State that provides preferential treatment for women employees in case of transfer (Tigray State Directive on Selection and Recruitment of Civil Servants, 2007: Article 51). The initiative taken by the Tigray state is a modest start that could be taken as a role model in both the federal and other regional states. On the whole, although affirmative action policies are created in increasing women’s participation in the civil service, women still face serious barriers heading to higher positions and in transferring to different working areas to career advancement. In the same way, the implementation of affirmative action also stretches to the post-employment activities in which employees would have access to the benefits and skills after being hired by the employing institutions.

### 6.1.2.3 Training and Scholarship

Post-employment activities include training, scholarship, skill building activities and empowerment programs that aim to make employees more competitive. In fact, training
programs encourage employees to acquire and develop knowledge, skills and experience, which have the effect of improving capacity and development of performance. In particular, training and scholarship programs enable women employees to be competitive in the workforce. Further, training strategies respond to the changing job demands and improve women’s career in the civil service. For the purpose of this study, training refers to short-term programs arranged for no more than a year, while scholarships refer to long term schemes planned for more than a year. However, the data of employees accessed for training and scholarship in the civil service show that women’s participation is insignificant compared to men. For instance, women constituted less than 15% out of more than 5,000 graduates who participated in training for the year 2000 to 2005 (Annual Personnel Statistics Abstract, 2006). This statistical data on training of women working in the civil service implies that lack of access to further professional career obliges women to hold lower positions in employment, which in turn verifies the lack of adequate concern paid to bridge the gender gap. Similarly, in the Ministry of Foreign Affairs in 2008/9, from the total of 10 trainees, 9 were men and only one woman had participated in the training. In the same year, five employees specifically, one woman and four men have had access to scholarship opportunities. In the subsequent years, 2009/10, from the total of 14 trainees, only two were women. In the same year, four men and no woman secured scholarship opportunities (Ministry of Foreign Affairs Human Resource List, 2010). In this regard, Gashaw Kassa, Head of the Scholarship and Assessment Centre at the Ministry of Foreign Affairs, gave two reasons for women’s low-rate of participation in training and scholarship. One relates to the lack of professional women employees in the institution and the other is failure to meet the requirements. Gashaw further noted that it is not possible for a woman with a six years service to compete with a man of 20 years service provided that a higher grade is given for years of service. Here one may wonder how the gap will be bridged if such severe preconditions are permitted to persist.

As explained earlier, the supportive requirement, particularly the work experience, plays a pivotal role in determining the appropriate candidate for job vacancy. The same would apply in training and scholarship programs too. In spite of the constitutional guarantees,
women often encountered obstacles in implementing affirmative action programs. One of my informants who do not want to disclose her name expressed the situation as follows:

Women who could pass the challenge in the hiring procedure are confronted with the second trap in advancing their career either by training or scholarship programs. It is just like passing through the eye of a needle. For example, I was first hired to this institution as a secretary graduating in diploma. Then, after continuing my studies by extension program, I graduated in management in a degree program. But it took me years to be assigned in the appropriate position. Then, the institution had an announcement to apply for a scholarship for a masters’ degree. Although I always apply and compete, it was in vain because of the famous curb of women ‘years of service’. In the competition, highest percentage is given to ‘years of service’ which in effect debarred many women from applying. Women are highly discouraged by the stringent criteria of candidate’s selection. But later the committee justified it as if there are not enough women applicants. How can a woman be in the salon if she can’t enter the gate?

It is a fact that men were recruited in the civil service for a much longer time while women’s inclusion and participation in the employment is a recent phenomenon. If, in any case, work experience is to remain as the major criteria for selection of candidates either for training or scholarship, it definitely would continue to discriminate women indirectly as it is already more disadvantageous for them. Needless to say, such practices will have a negative impact on the changing position of women at various levels of employment. Thus, the requirement of long-years of service would clearly exclude women from accessing any scholarships or trainings, which in effect is denial of career development opportunities. Unlike the hiring procedure, the announcement for training and scholarship does not limit by years of services. It requires the minimum years of service in the institutions that is not more than three years in most cases. However, the rules of procedure in selection of candidates allocates 30% for years of service for instance in the Ministry of Foreign Affairs (See Annex 4). That means the longer years of service one has in institutions, the higher probability to acquire the training or scholarship programs. In this respect, Halima, the Head of Women’s Affairs and Affirmative Action Directorate at the Ministry of Foreign Affairs, explains as follows:

I believe the 3% in hiring brings basic and fundamental change neither to women nor to the society. Rather through training and education the number of women professionals will be augmented if they could utilize it effectively and extensively.
It can safely be concluded that the current scheme of affirmative action programs in employment seems to be inconsiderate of the legacies of inequality and discrimination against women as envisaged by the FDRE constitution on two grounds. Firstly, the 3% would unlikely bring about significant changes in women’s participation in the workforce. It has been suggested that the present approach only benefits those few women who can fulfil all the requirements and compete equally with men. It does not bring many women into the fore. However, taken the historically determined factual situation of women and the legacies thereof, expecting them to instantly compete with men is certainly unrealistic. Women were disadvantaged by the patriarchal structures which result in fewer women advancing in their careers or applying for high-level positions. Although the national policy on women envisages for the inclusion of more women employees in the civil services, the program does not widen enough to grasp adequate numbers. In the course of action, women who had been victims of discrimination for centuries are obliged to stay behind the screen. Thus, the 3% in recruitment needs to be flexible in order to accommodate more women in places where they are highly underrepresented. Secondly, the supportive requirements, which otherwise should have encouraged women applicants, is unfavorable and hinders women’s participation greatly in the civil service. In addition, once women are hired by institutions, they could hardly compete and succeed in advancing their career either through training or scholarship for reasons of lack of long-term service.

In general, the current procedures overemphasis the importance of formal qualifications and work experience to the detriment of women who were not in the civil service for many years. In fact, it is improper to exclude women for the sole sake of shorter period of service in institutions by denying them all the opportunities in trainings and scholarships. As has been noted earlier, the supportive requirements enable institutions to determine the right applicant for available position. In view of this, it is not appropriate to disregard it completely. However, the overemphasis on years of services is often used to exclude women from positions and further educations at the civil service. For this reason, it is pertinent to set different years of service for women applicants. This would enable
women who would have the ability and potential to succeed but do not possess long years of work experience to qualify for appointment at the civil service. Redefining the supportive criterion, therefore, would enable a large number of women to be included in the pool of applicants. In sum, in order to overcome such hurdles, institutions need to take account of past legacies and adopt mechanisms that ought to accommodate women extensively. Otherwise, women could hardly benefit from any affirmative action programs, which could safely be concluded that women have been reluctantly invited to the civil service. With such sluggish measures, it would take centuries to reach the equality base for women; ultimately, women tend to lag behind their male counterparts in career developments. The next section investigates the challenges that have emerged in the course of implementation of affirmative action programs.

6.2 Challenges to the implementation of affirmative action

Positive developments have been observed in women’s employment opportunities and educational gains since the implementation of affirmative action programs. This has mainly resulted in visible quantitative gains for women in terms of their increased participation in the education and employment spheres, which is an encouraging and necessary step towards the advancement of women. Although patriarchal attitudes and practices have, by no means, been eradicated totally, evidently there has been increased awareness and broad acceptance of women to the public sphere in both the federal and state institutions. However, challenges have emerged in the course of the implementation of affirmative action programs. As has been noted, understanding the principle of affirmative action is pivotal for its successful implementation. Such comprehension also remains essential both for the beneficiaries of the program to claim their right and policy executors to implement the program effectively and efficiently.

6.2.1 Attitudinal

It has been suggested that much of the attitudes about affirmative action seem to have resulted from the misunderstanding of the concept of affirmative action. This section
assesses the attitudes and perceptions of affirmative action and investigates the prevailing factors that could impede its implementation.

6.2.1.1 Perceptions

The underlying assumption in the debates is that an individual's understanding of what affirmative action entails will certainly influence his or her attitude. Much of the controversy about confusion and misconceptions concerning affirmative action is the main source for the lack of understanding of the main premises underlying affirmative action. Indeed, lack of sensitization of affirmative action programs which often resulted from lack of conceptual clarity by policy implementers do constitute the major challenges. During interviews with a number of respondents, it was claimed that many officials do not have the knowledge of the principle related to affirmative action. In this regard, it is noticeable that even those civil servants who would like to comply with the policy may lack the required awareness of what they could and could not do. During an interview, Mohammed Ahmed, a senior official at the Afar Education Bureau, made the following remarks:

I am really confused about affirmative action. Are all women entitled to affirmative action? Do women need to ask for it or are they eligible automatically? You know as there is no detailed policy document regarding affirmative action, it creates misunderstanding in implementation.

Dawit Berhane, another official in the Tigray Capacity Building Bureau, made a similar remark:

I am not clear if all women are entitled to the affirmative action programs. I perceive that since it is a support it should be given only for needy women.

The above remarks demonstrate the variance perception on affirmative action among respondents. Questionnaires were distributed to university instructors, students, parliamentarians and employees in the civil service to gather sufficient facts. The perceptions of respondents were designed in three different perceptions namely, Award, Assistance and Right. In this context, an award is a gift given to someone as a present.
Assistance refers to a voluntary giving of help or support. A right meant an entitlement to a guarantee of access the violation of which is unlawful.

From the total of 360 respondents, the majority 182 (50.5%) of respondents believe that affirmative action program is an award and 107 (29.7%) of the respondents perceive affirmative action as an assistance, likewise only 71(19.7%) of the respondents consider affirmative action as a right. The majority of respondents both men and women including members of parliament and many experts have a misperception of the concept of affirmative action because of inadequate information and lack of awareness. Those respondents who saw affirmative action as assistance based their arguments on the assumption that women are biologically incapable to compete with men. Those who claim affirmative action as an award asserted that since it is aimed only at women, disregarding men, it is a gift for women. Those respondents who allege affirmative action as a right argue that women have been denied the rights to opportunities and resources unlike men therefore, any mechanisms that enable women to their share should constitute as their right. Hence, there is a misconception about affirmative action among the law makers. This, therefore, demonstrates that affirmative action has been mainly considered as assistance, and even worse as a gift provided by the government for women. Such misperceptions have an impact on the attitude of implementers in executing the program consistently. In other words, the enforcement of the program has depended on the discretion and willingness of implementers to extend support to women. It is apparent that lack of awareness could bring ineffective implementation of the program.

6.2.1.2 Equal opportunities

The principle of equality of opportunity is the central theme of affirmative action and is viewed as a crucial mechanism to overcome inequalities experienced by those who were discriminated against in the past. Affirmative action is justified as a response to ensure equality of opportunity. However, the experiences in the various countries reviewed in chapter three reveal that a policy of formal equality alone, though necessary, is not
sufficient to remedy the lingering effects of past societal discriminations. Given this background, respondents were asked whether they perceived that women are given equal opportunities as men. From the total of 360 respondents, 312 (86.7%) of respondents asserts that women do not have equal opportunity as men. Only 48 (13.3%) of the respondents deemed that women have equal opportunity with that of men. Those respondents who claim that women do not have equal opportunity as men base their answers on the existing patriarchal cultures and norms towards women. Whilst those respondents who allege that women have equal opportunity as men pointed out the rising rate of enrollment in education and increasing participation in employment.

6.2.1.3 Necessity

Given the majority of respondents believe that women are not given equal opportunities as men, it is appropriate to examine respondents’ perspective on the necessity of affirmative action. From the total of 360 respondents, the majority 220 (61.1%) affirmed the necessity for affirmative action for women while 108 (30.0%) of respondents oppose affirmative action for women. 32 (8.9%) percent of respondents allege that it has to depend on the circumstances of the case. These respondents asserted that each case has to be taken into consideration either to grant or deny affirmative action. They claim it has to be need-based. Hence, the majority of respondents consider the use of affirmative action as a means to advance women’s opportunities equally with men. They perceive affirmative action as a true advantage for women and a chance to further their studies and career. Women have strongly endorsed the necessity of affirmative action because of past legacies though there are some antagonists. Some men also have the impression that affirmative action has a role in bridging the gender-gap in the social sector. In addition, support for affirmative action was significantly enhanced by adherence to the principle of role modeling. It has been suggested that having more women in male-dominated domains encouraged the youth in pursuing their careers. The attitudes rejecting affirmative action are partly due to unawareness of prior discriminatory practices against women and partly for the purpose of their own opportunities and self-interest. These respondents further claim that affirmative action jeopardizes the existence of keen competition for limited opportunities available in the civil service and higher education.
Moreover, during our discussions, many women believe that affirmative action is a necessary tool in combating discrimination and bringing about sexual equality, which in turn brings socio-economic development in the country. They further maintain that affirmative action programs inspire a culture of responsiveness or sensitivity by institutions to gender representation in the enrolment process. Likewise, affirmative action policies seem to have enhanced gender sensitivity in planning and programming as well. A number of interviewees in this study clearly expressed their support for affirmative action for both academic and social reasons. Hailemicheal Abera, President of ECSC pointed out:

Affirmative action programs are good because they expand enrollment opportunities for students into higher education institutions, and therefore increase the likelihood of having more women staff in the academics in the future.

Affirmative action programs have also helped increase awareness of the socio-cultural, structural and other challenges that constrain women students’ from entering higher educational institutions. In this regard, Ubah Mohammed, Ex-State Minister of Women’s Affairs noted as follows:

Affirmative action plays a great role in changing societal attitudes towards women. The society will believe that women have been deprived of the opportunity; they have the capacity, and can participate in male-dominated careers not only in traditional fields if provided with the opportunities.

The responses to questions reflected the positive impact of affirmative action. This correlated with the arguments in favour of affirmative action, which were indicated in the literature review, maintaining that affirmative action is mainly aimed at bridging the gender gap and redressing gender inequalities between the disadvantaged and privileged groups. The reasoning given was because they further believe that historically, women will only have equal opportunity when efforts are made to compensate them for their historical disadvantages, so that their prospects for success are more equal with those of their competitors. The conclusions, therefore, is that affirmative action as a mechanism to redress gender inequality is strongly endorsed in the society.
6.2.1.4 Stereotypes

The preconceptions existing in the society characterize women in the public sphere as less competent and not able to attend some educational process at high level. Both the beneficiaries as well as non-beneficiaries of affirmative action perceive beneficiaries as less qualified than non-beneficiaries based on the assumption that individuals were hired only because of their group membership (Heilman, McCullough, & Gilbert, 1996: 604). Such stigma of incompetence in the eyes of non-beneficiaries of affirmative action programs have led to negative expectations and stereotypes (Heliman, Block & Lucas, 1992).

Respondents were asked whether or not they perceive beneficiaries of affirmative action equally competent as non-beneficiaries of the program. From the total of 360 respondents, the majority 234 (65%) perceived beneficiaries as less competent than non-beneficiaries while 126 (35%) stated they are better or equally competent as non-beneficiaries. Assumed prejudices and stereotypes were supported by the respondents, who believed that women are less intelligent, less capable and less hardworking. The attitudes of these respondents regarding competency of beneficiaries is influenced by the preconceptions and stereotypes regarding women and the information they possess about affirmative action. In our discussions, one student said that “many view women beneficiaries as less talented and not entitled to the position”. Those respondents who believe that beneficiaries of affirmative action are equally competent with non-beneficiaries asserted that women had been deprived of only the favourable circumstances not the capacity. They further declared that affirmative action programs only endorsed women to get the opportunity; henceforth they will be appraising by their performance. The conclusion, therefore, is that many people relate weakness and incapability with the term affirmative action so much so that women beneficiaries of affirmative action are viewed as less competent than their male counterparts. There is a prevailing perception that affirmative action is granted for those who are weak and cannot succeed by themselves.
6.2.1.5 Self-image

Given the general lack of knowledge about what affirmative action is and how it operates, it is expected to find variations in attitudes (Crosby, Golden, & Hinkle: 2001). It has been declared that such stereotyping and negative attitudes influence the implementation of affirmative action. In other words, attitudes are strongly influenced by the precise manner in which affirmative action program is described. In this respect, information and communication is paramount. Critics suggested that affirmative action undermines the self-confidence of beneficiaries of the policy (Nacoste 1990, Boxil 1992). Members of targeted groups may also question their qualifications and performance (Nacoste, 1989:108).

The perception of women on becoming beneficiaries of affirmative action program is ambiguous. Respondents were asked whether they perceived to be stigmatized or lack self-confidence. From the total of 127 respondents, the majority 78 (61.4%) of respondents indicate a positive self-image while 32 (25.2%) consider that being beneficiaries of affirmative action program may be a disadvantage. Only 17 (13.4%) of the respondents indicate low self-esteem. For these respondents, affirmative action hurts self-confidence of beneficiaries. They indicated the verbal abuse especially by men against women beneficiaries. They also allege the negative connotation related to the very concept of affirmative action worldwide. Reactions will become increasingly negative as there is no clarification of the concept.

For some, affirmative action becomes not only a means to succeed but also a way of challenging existing stereotypes and of fighting against discrimination. Affirmative action also makes women feel capable as their male counterparts and reduce a major reason of social prejudice. Beneficiaries, both in education and employment sectors perceive the implementation of affirmative action as a strategy of reducing the social gap between men and women. A female university student explains:
To me, affirmative action is a chance for the future, the chance to develop career, the opportunity to proving to myself and others that women can be somebody and we are not inferior to men. When I joined to higher education, I felt more self confident.

Another female student declares:

I have personally benefitted from affirmative action. It contributed to forming a new self image, which is reflected by the positive self esteem and increased self confidence. I believe my admission to higher education not only benefits me but also eliminates the age-old attitudes towards women. It changes the way females are perceived by others and perceive themselves.

Of course, there are also opposite views, as exceptions from this. The reasons for this attitude are largely explained by reference to the societal perception of beneficiaries’ competency that erodes their self-confidence. It is noted that the negative perception associated to the affiliation with affirmative action make women to be hesitant to seek the program. During the interviews, few women have also expressed ambiguous attitudes towards becoming beneficiaries as some of them felt demean. A female student commented as follows:

Becoming beneficiaries of affirmative action challenges the positive self-image of women by designating as ‘incapable’. Our colleagues question our achievements and develop the notion that “you are here for the sole sake of affirmative action; you came here with low cut-off points”. They also humiliate and assign nicknames for beneficiaries. Thus, as a woman, it is better to manage as best as we can.

During one of the interviews, another female student explains the feelings of becoming beneficiaries in this way:

It is really hard to become beneficiaries of the program. Men consider all women as though they could not compete by themselves. They also think that we should be treated in every respect differently. They perceive that if a woman is selected or has good grade, they still assumed that it was because of affirmative action. They take it for granted that affirmative action beneficiaries are incapable. Some of the students even challenge the quality of the grade granted to beneficiaries. So because of this many women do not want to become beneficiaries of the program.
It is noted that such negative feelings occurred more often for the beneficiaries of affirmative action in education as opposed to the employment sector. Students are afraid of discrimination and repercussions from their male counterparts. This is partly because their admission or departmental placement with low cut-off points could easily be identifiable by other students or their classmates. However, with regard to beneficiaries in employment as preferential hiring or promotion is not noticeable by other employees at large, women employees who were hired or promoted through affirmative action have less likely such feelings.

6.2.6 Lowering standards

When asked if affirmative action has resulted in lowering of standards at their institutions, the majority 179 (49.7%) of respondents agree that affirmative action efforts result in lowering of standards at their respective institutions while 138 (38.3%) disagree. Only 43 (11.9%) of the respondents indicated that they did not know. It is evident, therefore, that the majority of respondents perceive affirmative action efforts as resulting in the lowering of standards at institutions. However, interviews with hiring officials asserted that affirmative action does not lower qualifications. In this regard, Dereje Tegeyebelu, Head of the Human Resource Management Department of the Civil Service Commission, states:

Gender is a plus factor to qualifications. We only add three points to women if they score equal grades to that of men. So in this way, we never compromised qualification. The applicants’ gender will not be a decisive factor: they must meet the requirements of the position. There is no way to hire unqualified women. For instance, recently we hired a male candidate because they have more than 3% grade difference with a female candidate.

The responses manifest that there is a clear lack of knowledge of what affirmative action is about and the perception that it is based on the incorrect premise of confusing the changing standards with lowering them.

6.2.1.7 Adequacy
It is widely believed that women in Ethiopia are not benefiting from the program effectively and extensively. Respondents were asked whether women are given adequate priority as beneficiaries of affirmative action programs. 256 (71.1%) thought that affirmative action programs had not been put into practice adequately while 87 (24.2%) believe that women are adequately benefited from affirmative action programs and the 17 (4.7%) did not know. The reason given was lack of adequate number of women coming in the playing field, lack of awareness, negative attitude that discourage women, lack of competent authority that could supervise the work of the institutions. The neglect of women as affirmative action beneficiaries is also evident in many institutions. During the interviews many agreed that affirmative action was not adequate and a lot has to be done for the advancement of women.

The conclusion, therefore, is that students more than employees believe that women are given adequate priority as beneficiaries of affirmative action program in higher institutions. This is partly because students measure the success of such programs according to the overall progress of women nationwide while employees do so based on the progress of women at their respective institutions.

6.2.2 Institutional framework

It has been widely argued that institutional commitment to affirmative action such as continuous follow-up and appropriate monitoring and evaluation systems facilitate the program to succeed. Institutions have to establish procedures to monitor and evaluate the implementation of affirmative action programs on an ongoing basis and to determine whether reasonable progress is being made.

6.2.2.1 Monitoring and evaluation

Although, in principle, affirmative action increases the representation of women in the public sphere, it is important to note that such programs are feasible only to the extent that they are implemented comprehensively and effectively. Monitoring would be required to ensure that the implemented programs are in motion and making progress.
Evidently monitoring mechanisms enable institutions to be accountable for their failure to perform as per the stated objectives and plans. Moreover, institutions with better-enforced affirmative action programs could admit or hire more women than institutions with poorly enforced affirmative action programs. It is clear that affirmative action programs could not succeed on the basis of principles and intentions alone. They rather require oversight and monitoring to hold institutions accountable for their stated goals and plans in gender equality. Against this background, respondents were questioned about their perceptions of whether the monitoring of affirmative action policies and procedures at their institutions had been successful. 194 (53.9%) were of the opinion that such procedures did not exist while 123 (34.2%) indicated that they did not know or were unaware of the procedures. Only 43 (11.9%) claimed that such mechanisms existed. In sum, the majority of the respondents indicated that they were either unsure or did not know about the monitoring and evaluation of affirmative action programs at their institutions. This sentiment was supported by the interviews. An expert at the FCSC commented as follows:

There are plans for general training not specifically for affirmative action. There are no goals and timetables set by the institution. Affirmative action is implementation but there is no statistics or evidence to say these are employees appointed on the basis of affirmative action.

It is evident from the above comments and the aforementioned responses that monitoring of affirmative action policies and procedures has not been successful at institutions of higher education and employment. In addition to those who indicated that monitoring of affirmative action policies and procedures were not successful a large percentage who either did not respond or were unaware indicated that there was no evidence of any monitoring procedures or effective communications about such procedures or there was no feedback on monitoring. As reviewed in chapter three, in countries like the USA, India and South Africa, monitoring of affirmative action programs is considered most essential for its success.

In Ethiopia, as for the monitoring procedures, there are no specific legal provisions. Due to this, employers become reluctant to have regular review of their workforce composition to determine whether there is fair employment, or to undertake remedial
action where necessary. The interviews with officials at the civil service and higher
education revealed that in the absence of such procedures the institutions will be unable
to ascertain whether the program is progressing or whether there are any shortcomings
that require rectification. In an interview, a member of the recruitment committee made
the following remarks:

We sometimes apply affirmative action for women applicants and sometimes
we don’t. However, neither the management nor women job seekers
questioned the procedure. We consider affirmative action as voluntary not
mandatory. So far we neither have any regular monitoring nor occasional
reports. Thus, we don’t have knowledge of the progress made by affirmative
action in our institution.

Another recruitment officer who declined to disclose his name revealed that:
Because of lack of efficient monitoring and evaluating system, in most cases
affirmative action programs remain only on paper. As far as I have
experienced affirmative action is little more than a lip service. There are no
attempts made by institutions to facilitate its implementation especially in the
civil service.

A senior lecturer at the AAU indicates that

Monitoring and evaluation system is a good reminder to be conscious to
apply affirmative action in recruiting or promoting women. There shall be
proper monitoring and evaluation of the system. Institutions need to develop
a reporting system for monitoring and evaluating the progress to each
departments and higher education institutions toward achieving its goals.

The conclusion, therefore, is that institutions were ill-prepared to establish effective
monitoring systems. Responses to earlier questions and information from the interview
have indicated that an affirmative action policy does not exist at the majority of
institutions. Hence, women are unaware of it. Under the circumstances, it would be naïve
to expect affirmative action to succeed. This calls for internal control mechanisms to be
strengthened.

6.2.2.2 Grievance redressal
It has been suggested that the existence of effective grievance procedures for handling individual complaints is of paramount importance for the successful implementation of affirmative action programs (Hitt & Keats, 1984; Hitt et al., 1983). The presence of appropriate grievance redressal procedures to resolve complaints internally are advantageous both to the institutions and the complainant. Beneficiaries who feel disadvantaged or treated unfairly by the respective institutions can use internal grievance redressal procedures to resolve their differences.

Nevertheless, the lack of clear and detailed legislation in implementing affirmative action, make the matter worse in complaints handling both in education and employment sectors. In other words, institutions have not established grievance redressal procedures to review, investigate, and resolve alleged violations of affirmative action policy. As reviewed in chapter three, different countries have developed their own grievance redressal mechanisms. For instance, in South Africa, in case of non-compliance, the Department of Labour and the Parliamentary Portfolio Committee on the Public Service and Administration have the authority to take action against defaulting departments and administrations (White Paper on affirmative action in the public service 1998, Section: 4.9). Likewise, in India, any employee aggrieved about the implementation of affirmative action in public service can complain to the Head of the department, or directly to the Ministry of Personnel, or to the National Commission for Scheduled Class and Scheduled Tribes, or to the Commission for Backward Classes or to the National Commission for Women or to the central or state administrative tribunals and High Courts for legal remedy (World Bank Report, 2001: 15).

The interviews with officials at educational and employing institutions in Ethiopia revealed that aggrieved women file their complaints to the respective women’s department whose role is only limited in giving advisory opinions. Because of this, women complainants barely brought their case to the departments. In this regard, Meberte Tekelemariam, Coordinator of Gender Office in Semara University, confirmed that no complaints have ever been filed to their office regarding affirmative action. Similarly, in case of recruitment, women complainants encountered difficulties in the internal complaint process system as there is no place to complain. The disciplinary committee
established in all institutions is mandated to handle only post-employment disputes. In case of recruitment, applicants have a right to bring their complaints to the selection committee for reconsideration of the case. If the committee did not reverse their decision, which they did not in most cases, the applicants have no chance to further file their complaints. Alternatively, in post-employment cases, women complainants can bring their case to administrative tribunals and courts for legal remedy. In fact, women complainants at the recruitment phase could not enforce their right to affirmative action in a court of law. It follows that, women complainants brought their case neither to the disciplinary committee nor to gender departments as noted by Solomon, Head of Administrative Courts in Civil Service Commission and Nureya Mohammed, Directress of Policies and Affirmative Action in the Ministry of Foreign Affairs, at their respective institutions. As per the interviewees, so far no case has been instituted against a recruitment committee ordering to halt its employment interview for an alleged breach of affirmative action policies in the exercise. As a result, women complainants face difficulties in enforcing their right. During one of my interviews, a woman employee made the following comment:

We have to go nowhere and file our complaints. Our right to affirmative action is a tiger paper. It is a right which you cannot enforce it anywhere. That is why most officials are reluctant to implement the program. They do not consider the matter seriously and they know that nothing will happen if they did not comply with the rules. I know that it is my right but at the same time I am aware that it cannot be enforced. I would rather prefer to keep silent as no justice would be served.

In sum, implementing institutions do not feel sufficiently accountable to affirmative action programs. The policy refrains from stipulating tangible penalties on institutions and authorities declining to implement affirmative action programs accordingly. Affirmative action programs, therefore, depend on voluntary efforts per se and remain more of a matter of discretion for authorities than a policy. Thus, women beneficiaries of affirmative action measures would not be in a position to make a ‘claim’ for affirmative action programs. Generally, affirmative action programs would need formal supervisory mechanisms in order to ensure their consistent implementation. It can safely be
concluded that the absence of adequate enforcement and monitoring mechanisms has rendered the legislation toothless.

6.3 Conclusion

The findings from this study confirm that attitudes, perceptions, practices and procedures related to affirmative action in higher education and employing institutions provide indicators of the challenges at implementation. While these findings alone may not provide a complete picture of the complexities related to affirmative action implementations, the data collected in this research identify specific areas that can be remedied in order to achieve the objectives set out in the constitution. In other words, this study has helped to identify the possible barriers for the effective implementation of affirmative action which could serve as a basis for further research.

Chapter 7

Concluding remarks and recommendations

This study notes that some sporadic and spontaneous steps had been taken to improve the situation of women in some sectors of the Ethiopian societies notably in urban areas during the consecutive regimes, namely the Imperial Era (1930-1974) and the Military regime (1974-1991). However, fully-fledged policy reform towards gender equality was officially enacted and took an institutional shape in the current federal system of government which has been in place since 1991. The Women’s Policy (1993), the National Action Plan on Gender Equality (2006) and the Women Development and Change Program Implementation package (2006) are among the various policies and strategies that directly focused on speeding up equality between men and women. Furthermore, the 1995 FDRE Constitution incorporates a series of provisions that deal with the rights of women in a comprehensive manner. These include women’s right to equality in marital, personal, and family matters, the right to maternity leave, participation in policy matters, exercising property rights, pension entitlements, access to family planning, and the right to equal pay for equal work (Articles 34 and 35(5-8)). The Constitution further provides provisions for the elimination of traditional practices
harmful to women and explicitly ban laws, customs and practices that oppress or cause bodily or mental harm to women (Article 35 (4)). The Constitution has also adopted affirmative action measures in favour of women in view of redressing structural and social inequality (Article 35 (3)).

Indeed, affirmative action is a controversial concept worldwide. A wide range of arguments have been provided by opponents and proponents of affirmative action since its inception. The debates on affirmative action revolve around issues pertaining to the necessity of the program, selection of target groups, the fairness/ unfairness of the programs etc. Proponents have argued for affirmative action for it promotes the professional careers of people from groups that have historically been denied equal opportunities and prevent future discrimination or exclusion from occurring. Opponents, by contrast, contend that affirmative action can cause reverse discrimination and could violate the principle of merit.

To contextualize the research agenda, this study has briefly reviewed the historical development of affirmative action programs in the USA, India and South Africa. As demonstrated in the study, the historical context of each country sets the basis for affirmative action. In the United States, institutional racism was shaped by the system of slavery in which people were treated as personal properties through legalized racist policies and practices. Although affirmative action addresses the historical effects of these institutional injustices, it has not been free from rejection since its inception. Supporters justify affirmative action as a remedy for prior effects of slavery, segregation of the Jim Crow laws and racial discrimination in every aspect of society. Opponents allege for a society where every person is treated as an individual and evaluated on his or her own merits. The mid-1990s has brought organized efforts against affirmative action in admission to higher education in the US. The on-going debates finally led to the elimination of affirmative action programs in different states of the US because it is believed that affirmative action has reached its capacity to promote proportional representation.
India, the second most populous country in the world, had a deep-seated caste based system of stratification which refers to a stratified social hierarchy in which people were alienated into separate close communities known as caste. Untouchability, which has its roots in the India’s caste system, was a social context of age-old discrimination which necessitated progressive legislation and introduction of affirmative action in India. The 1950 Indian Constitution affirms the economic and educational betterment of the weaker section of the Indian society. The Constitution further provided provisions for reservation policies for Schedules Castes, Schedules Tribes and Backward classes, who had been subjected to systematic and extensive social and economic discrimination through the caste system. In India, reservation policies that were introduced several decades ago apply in the political sphere, in government posts and educational institutions. The rationale for the continuing application of affirmative action is based on intergroup economic disparity, social backwardness, compensating historical wrongs of the caste system and level the playing field.

The history and social matrix of South Africa has laid the foundation for affirmative action in education and employment sectors. Needless to say, apartheid had an overwhelming effect on the social, economic, political and cultural life of black South Africans and women in particular. Looking at this history of discrimination, affirmative action becomes a necessary means to level the playing fields in the education and working environments. It has been noted that after decades of segregationist policies, non-discriminatory legislation per se is not enough to ensure equal opportunity. In the post-apartheid era, affirmative action program was adopted to rectify prior discriminatory practices and promote the economic advancement of disadvantaged groups, notably blacks and women. Proper monitoring and evaluating systems are in place to ensure compliance with the laws regarding affirmative action programs.

In short, such institutionalized discrimination and underrepresentation has urged the need for affirmative action in these countries due to their long history of material deprivation and social exclusion. Although these countries represent different continents, cultures and various levels of socio-economic developments, the rationale for the adoption of affirmative action is mainly based on redressing the effects of extreme historical wrongs.
This study has also shown that the deeply rooted patriarchal notions and gender role stereotypes, harmful traditional practices, religion which is mainly manifested through the general culture and discriminatory legislation, have relegated women to a subordinate position in Ethiopia. In addition, the legal system reiterates women’s subordinate position in various discriminatory laws. Further, it can be concluded that given the deeply entrenched structure of patriarchy and existing gender disparities, equal opportunity legislation per se may not be sufficient on their own unless accompanied by effective and practical positive measures and mechanisms. In other words, merely lifting the barriers through formal laws is not sufficient to bring about changes for these discriminatory practises are deeply-seated in society. Thus, acknowledging the necessity to eliminate the practice of subordination, Ethiopia has introduced affirmative action programs as a prime policy in order to enhance access and equality in employment, economic, political and educational opportunities for disadvantage groups of society.

Affirmative action measures have indeed enjoyed worldwide support in all relevant international instruments. More specifically, international conventions, organizations and world conferences including, the Convention on the Elimination of Racial Discrimination (CERD), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) have promoted affirmative action in various respects. Likewise, regional legal instruments including the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women, the so-called ‘Maputo Protocol’ have adopted affirmative action in order to promote women’s equal participation in public life.

Since the implementation of affirmative action programs in Ethiopia, some positive developments have been achieved in terms of employment opportunities and educational gains. Nonetheless, various challenges and constraints were identified to the effective implementation of affirmative action programs. Among others, attitudinal, structural and institutional difficulties hinder the effective implementation of affirmative action programs. Besides, the lack of a clearly articulated policy objectives, mandates, strategies and timeframe for achieving the stated goals have contributed to the ineffectiveness of affirmative action programs. In a nut shell, the study shows that the implementation of
affirmative action has clearly lacked well-thought organizational and institutional arrangements which are pivotal tools for the programs to be realized. In this regard, the study emphasizes that voluntary effort per se to increase women’s representation is insufficient and remains more of a matter of discretion for authorities than a policy, which in turn makes affirmative action programs unenforceable.

This study maintains that while institutions have in principle indicated their support for affirmative action, the data obtained from these institutions, questionnaires and interviews manifest little change has occurred at the employment sector and higher educational institutions over a ten year period (2000-2010). Women are still employed often in low-paid jobs and remain under-represented in many occupations, most notably in high-level positions. In this regard, women have felt disappointed with the way institutions implement, promote and monitor affirmative action programs. They rather believe that affirmative action is a bit of propaganda with no tangible practical effect.

The study also found out that both beneficiaries and non-beneficiaries of the program have a limited knowledge and misunderstandings of the concept of affirmative action. As a result, the notion of affirmative action continues to be viewed as a gift from government to women rather than a right for redressing past discrimination. This misunderstanding may have also contributed to the consequential lack of commitment to its effective implementation and slowing the pace of achieving equality.

Further, it must be underlined as shown in this study, that affirmative action is perceived to be poorly implemented in the institutions under study as the latter have not done enough to encourage women to benefit from affirmative action programs either through advertising, recruitment or promotion. No baseline studies have been adequately conducted by any of the institutions under review on the nature and modalities of the implementation of affirmative action, and hence it is difficult to track improvements or the results of affirmative action in ensuring gender equality. Although the Constitution and federal and state laws, including legislation on higher education and civil service, have incorporated provisions for affirmative action, lack of active follow-up has made affirmative action ineffective. The current institutional and legislative framework of
affirmative action appears to be weak and often inconsistent. The conclusions drawn from this study, therefore, call for a standardized procedure for the successful implementation of affirmative action programs.

The main findings of this study show that the individual, institutional and societal capacity development programs could hardly permit affirmative action to be effectively applicable. In this regard, what is clear is that the policy of affirmative action has been introduced prior to preparing the necessary conditions on the ground in which awareness, attitudinal changes and material conditions to execute and follow up the implementation of affirmative action were hardly in place. One important observation noted in this study is that the lack of a sense of ownership and engagement by women has hindered the effective implementation of affirmative action. It is evident from this study that there is a lack of adequate, active and visible support from women as they are not engaged in any coherently worked out schemes in order to ensure that affirmative action programs are translated into a strategically sustainable benefit for them. In this regard, women’s role to actively participate in policy initiatives and relevant activities as far as affirmative action policy and implementation is concerned is meager. It can, therefore, be safely concluded that beneficiaries of affirmative action, implementing institutions and the society at large seem to be not sufficiently ready or unprepared to accommodate the program. Hence, affirmative action remains just an imported concept and sought to accomplish its objectives without being internalized among all stakeholders.

Finally, this study has specifically identified loopholes in recording the available data regarding implementation of affirmative action in educational and employing institutions. The number of women who have been selected, admitted, recruited and promoted through affirmative action programs is not clearly indicated in the statistical reports. This, in turn, makes gender–based analysis, monitoring and evaluation of policy instruments difficult.

**Recommendations**
Having drawn up the above mentioned findings and remarks; the researcher proposes recommendations as listed below for alternative affirmative action programs which can be duly categorized in three phased parts: the planning phase, the implementing phase and the monitoring and evaluation phase.

I.

1. During the planning phase, a legal and institutional framework needs to be reviewed for a sustainable program. In this phase, possible activities may have to be listed to be utilized as a guide. More specifically, the planning phase needs to include a series of specific intervention strategies; inter alia, define the concept of affirmative action, set goals and objectives, create an awareness of affirmative action policies, develop strategies, determine the procedures and timeframes to achieve the objectives, consider the availability of resources for undertaking the proposed activities, determine strategies for information communication, identify progresses, problem areas, formulate solutions and determine the relevant bodies for monitoring and evaluation of the program.

2. As has been noted earlier, knowledge of principles and practices of affirmative action is an essential element for a successful implementation. It follows that an effective affirmative action program depends on commitment from all stakeholders. This is only possible if students, employees and institutions have recognized the need for affirmative action and accept its goals. In this regard, information and communication is an important tool for ensuring support and acceptance of affirmative action. It is essential that the rationale and purpose of affirmative action programs would fully be communicated, understood and accepted throughout the institutions. By way of communication of information, all stakeholders are able to see the relevance and importance of affirmative action to ensure gender equality. Women can see themselves as active participants in the process. They can for instance, respond positively to opportunities for training, development and career enhancement. Similarly, men need to understand the concern and values of women and demonstrate their support through their attitudes to achieve the aim and objective of the program. The key to developing a
sense of ownership is the active participation of students and employees. Affirmative action programs, therefore, can become firmly entrenched in the system rather than being superimposed upon them.

3. Awareness-raising and sensitization plays a pivotal role in understanding the principles underlying affirmative action policies and practices. Awareness could be achieved through formal educational programs and informal trainings. It involves a range of practical implementation tools and guidelines such as trainings, workshops, conferences, seminars, newsletters and publications. These campaigns need to focus specifically on eliminating harmful traditional practices against women, bringing about changes in attitudes and stereotypes and overcome the misconceptions and misunderstandings by familiarizing people with the goals, objectives and principles of affirmative action. In short, raising awareness and information around the promotion of women’s rights is indispensable for the effective implementation of affirmative action programs. Unless these issues receive careful consideration, affirmative action efforts will continue to be weak, allowing merely cosmetic changes. It is, therefore, inevitable that such strategies must be carefully planned and monitored to ensure the success of achieving the stated aims.

4. As has been noted above, although the principle of affirmative action is firmly established in and by the Constitution, it is not adequately supported by enabling laws and policies. The fact that neither the Constitution nor any other legislation for that matter, defines affirmative action, the constitutional provision on affirmative action becomes difficult to interpret and execute. In circumstances where the concept of affirmative action not clearly defined, courts would find it hard to determine what affirmative action does or does not constitute. Furthermore, no specific and comprehensive policy or legislation has been developed to ensure the effective implementation of the constitutional provision. Provisions that provide for affirmative action are thus found scattered in the different laws and regulations. Affirmative action will remain merely a paper tiger without the necessary legal backing. Thus, it is very important to enact affirmative
action laws that could assist institutions in developing and implementing action plans that will reflect their own particular circumstances. Subsequently, implementing institutions such as higher educational institutions and the civil service need to develop practical guidelines for executing and monitoring their respective affirmative action plans.

II.

5. The implementation phase involves designing various strategies of implementation to have an effect on the goals identified in the planning phase. More specifically, such measures include establishing roles and responsibilities of persons in institutions involved in each activity; maintain database of beneficiaries; identify the financial and human resources required for each activity and allocate a timeframe for the activity to be completed. It has been observed that most institutions do not have a specific department or unit that monitors the implementation of affirmative action. In this regard, the establishment of an affirmative action committee in each ministry responsible for the promotion of the institution’s affirmative action plans is of crucial importance. Alongside, human resource departments need to maintain regular communications and provide updated plans to the affirmative action committee. This committee must ensure the integration of the affirmative action plan into the human resources development strategy. More specifically, the committee can be responsible for redesigning advertising vacancies that reach more women, for monitoring of affirmative action programs; and play a role in the selection, hiring, promotion and appointment of employees. Likewise, setting up an affirmative action office in each higher educational institution responsible for the implementation and supervision of an affirmative action program in their respective institutions can make it workable.

III.

6. The monitoring and evaluation phase involves an assessment and evaluation of affirmative action program’s progress in achieving its established goals and objectives. Institutions, in this respect need to design monitoring, reporting and
evaluation arrangements aimed at assessing the implementation and compliance of the programs. Such assessment will provide further insights into the progress that has been made and the remaining barriers that need to be addressed for the promotion of affirmative action. Institutions, therefore, set monitoring and implementation mechanisms to be able to measure the impact of affirmative action. Such a monitoring mechanism could enable to demonstrate not only the quantitative representation of women but also qualitative changes that have been brought about, such as a woman’s sense of personal empowerment, greater self-confidence or a higher sense of self-esteem as well. The report should include the activities performed and the results achieved.

7. Institutions are also required to develop complaints handling procedures for evaluating and acting upon complaints. Adequate internal grievance procedures should be established for those beneficiaries who perceive that their right to affirmative action is infringed. In this regard, it is important to make a provision for resolving conflicts that may arise as a result of implementing affirmative action policies. Every effort shall be made by institutions to resolve all complaints without delay and in a fair and consistent manner. Moreover, insertion of a penalty clause in order to redress non-compliance could possibly better facilitate the implementation.

Furthermore, it is commendable that the Ethiopian Ministry of Women’s, Children and Youth Affairs be entrusted with a role to undertake the task of monitoring and evaluating the implementation of affirmative action programs in view of ensuring the progress of implementation in institutions. Furthermore, it should be underlined that the Federal Civil Service Agency, which is mandated with the task of collecting data on civil servants from both the Federal Government Offices and Regional Civil Service Agencies, is expected to produce sex-disaggregated data from the annual report of Federal and Regional Governments Personnel Statistics Office. It would be ideal to include statistics on affirmative action in the annual reports regularly. This will help to demonstrate the original gaps and the changes that have occurred as a result of the applications of affirmative action programs.
Likewise, higher educational institutions need to include statistics of affirmative action. The monitoring and evaluation system and grievance redressal mechanisms of the South African model could be cited as one practice relevant to a successful implementation of affirmative action programs.

Equally important, the information gathering, documentation and retrieval system have been a barrier for research. This has to be substantially upgraded to meet the needs of academics and researchers. In general, the mechanisms in place to record data nationwide have encountered problems. It can be said that institutions under review have poor primary data and information recordkeeping practices that call for an improved and standardized systems. The researcher hopes that this study contributes to the literature on affirmative action in Ethiopia.

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Samenvatting


Positieve discriminatie is wereldwijd een controversieel begrip. Al vanaf het ontstaan ervan wordt door zowel tegenstanders als voorstanders van positieve discriminatie een breed scala aan argumenten geboden. De debatten over positieve discriminatie gaan
onder andere over kwesties met betrekking tot de noodzaak ervan, de selectie van doelgroepen, de eerlijkheid of oneerlijkheid ervan enz. Voorstanders beweren dat positieve discriminatie dient om de carrières van mensen uit groepen die in het verleden zijn onderdrukt of geen gelijke kansen hebben gekend te bevorderen, en toekomstige discriminatie of uitsluiting te voorkomen. Tegenstanders daarentegen beweren dat positieve discriminatie omgekeerde discriminatie vormt en in strijd is met het beginsel dat men beoordeeld moet worden naar verdiensten.

Het onderzoek geeft een kort overzicht van de historische ontwikkeling van de positieve discriminatiemaatregelen in de Verenigde Staten, India en Zuid-Afrika. De historische context van elk land vormt de aanleiding voor positieve discriminatie. In de Verenigde Staten ontstond racisme door het systeem van slavernij waarbij mensen werden behandeld als privé-eigendom en door gelegaliseerde racistische praktijken. Hoewel positieve discriminatie zich richt op de gevolgen van institutioneel onrecht, is het nooit gevrijwaard geweest van afwijzing. Voorstanders achten positieve discriminatie gerechtvaardigd als een remedie tegen de gevolgen van de slavernij, van rassenscheiding, van de Jim Crow-wetten en van de rassendiscriminatie in elk onderdeel van de samenleving. Tegenstanders daarentegen beweren dat positieve discriminatie niet past in een samenleving waarin ieder mens wordt behandeld als een individu en beoordeeld op zijn of haar eigen verdiensten. Halverwege de jaren '90 vond er georganiseerd verzet plaats tegen positieve discriminatie in de toegang tot het hoger onderwijs in de VS. De voortdurende debatten leidden uiteindelijk tot de afschaffing van programma's van positieve discriminatie in verschillende staten van de VS, omdat men geloofde dat positieve discriminatie zijn capaciteit heeft bereikt om evenredige vertegenwoordiging te bevorderen.

India, het op één na dichtstbevolkte land van Azië, kent sinds lang een diepgeworteld kastenstelsel. Het kastenstelsel verwijst naar een gelaagde sociale hiërarchie waarin mensen gescheiden werden in afzonderlijke gemeenschappen, de zogenaamde kaste. Onaanraakbaarheid, die zijn wortels heeft in het Indiase kastenstelsel, was een sociale context van eeuwenoude discriminatie die progressieve wetgeving en de invoering van positieve discriminatie in India noodzakelijk maakten. De Indiase grondwet van 1950
bekrachtigt de economische en educatieve verbetering van het zwakkere deel van de Indiase samenleving. De grondwet voorziet verder in een beleid van reservering voor wat worden genoemd de ‘Scheduled Castes’, ‘Scheduled Tribes’ en de ‘Backward Classes’, die slachtoffer waren van systematische, sociale en economische discriminatie onder het kastenstelsel. In India gelden reserveringsvoorwaarden die enkele decennia geleden werden geïntroduceerd in de politieke sfeer, in overheidsposities en onderwijsinstellingen. Het voortdurende beleid van positieve discriminatie is gebaseerd op de economische ongelijkheid tussen de groepen, de sociale achterstand, het compenseren voor historisch onrecht van het kastenstelsel en het creëren van een gelijk speelveld voor alle deelnemers van de samenleving.

De geschiedenis van Zuid-Afrika heeft aanleiding gegeven tot het treffen van positieve discriminatiemaatregelen in de sectoren werk en onderwijs. Apartheid heeft een overweldigende invloed gehad op het sociale, economische, politieke en culturele leven van de zwarte Zuid-Afrikanen en van vrouwen in het bijzonder. Met het oog op de geschiedenis van discriminatie in Zuid-Afrika wordt positieve discriminatie noodzakelijk geacht voor het wegwerken van structurele onrechtvaardigheden in het onderwijs en in de werkomgeving. Vastgesteld is dat na decennia van segregatiebeleid, niet-discriminerende wetgeving alleen niet voldoende is om gelijke kansen te kunnen garanderen. In het post-apartheid tijdperk is positieve discriminatiebeleid geëntameerd om de discriminerende praktijken uit het verleden te corrigeren en de economische vooruitgang van kansarme groepen te bevorderen, met name van de zwarte bevolking en van vrouwen. Er zijn goede evaluatiesystemen in het leven geroepen om te zorgen voor de naleving van de wetten met betrekking tot positieve discriminatiemaatregelen. Geïnstitutionaliseerde discriminatie en ondervertegenwoordiging heeft positieve discriminatie in deze landen noodzakelijk gemaakt met het oog op hun lange geschiedenis van materiële deprivatie en sociale uitsluiting. Hoewel deze landen verschillende continenten, culturen en verschillende niveaus van sociaal-economische ontwikkelingen vertegenwoordigen, is de reden voor het aannemen van een positieve discriminatiebeleid voornamelijk gericht op het ongedaan maken van de gevolgen van historisch onrecht.
Het onderzoek heeft ook aangetoond dat de diepgewortelde patriarchale noties en geslachtsrol stereotypen, schadelijke traditionele praktijken en religie die vooral tot uiting komen in de algemene cultuur en discriminerende wetgeving, tot een ondergeschikte positie van vrouwen in Ethiopië hebben geleid. Daarnaast bevestigt het rechtssysteem de ondergeschikte positie van vrouwen in diverse discriminerende wetten. Verder laat het onderzoek zien dat - gelet op de diepgewortelde structuur van het patriarchaat en de bestaande geslachtsongelijkheid - wetgeving die gelijke kansen biedt op zichzelf niet voldoende zal zijn, tenzij er ook effectieve en praktische positieve maatregelen volgen. Met andere woorden, de belemmeringen opheffen door middel van formele wetten is niet voldoende om veranderingen teeweeg te brengen, aangezien discriminerende praktijken zo diepgeworteld in de samenleving zijn. Ethiopië erkende de noodzaak om de praktijk van ondergeschiktheid te elimineren, en heeft daarom positieve discriminatiemaatregelen geïntroduceerd als een prioriteitsbeleid om de toegang tot en gelijke behandeling in arbeid, economische, politieke en educatieve mogelijkheden te verbeteren voor benadeelde groepen in de samenleving.


Sinds de invoering van positieve discriminatiemaatregelen in Ethiopië, zijn positieve ontwikkelingen waargenomen bij de werkgelegenheid en educatie voor vrouwen. Toch zijn in dit onderzoek verschillende uitdagingen en beperkingen voor de daadwerkelijke uitvoering van maatregelen van positieve discriminatie geïdentificeerd. De bestaande gedragspatronen, structuren en instituties belemmeren de effectieve uitvoering van positieve discriminatie. Daarnaast hebben het ontbreken van duidelijk geformuleerde
beleidsdoelstellingen, mandaten, strategieën en termijnen voor het bereiken van de gestelde doelen bijgedragen aan de ineffectiviteit van positieve discriminatie. In het algemeen blijkt uit het onderzoek dat er bij de realisatie van positieve discriminatie duidelijk een gebrek was aan goed doordachte organisatorische en institutionele regelingen, die cruciale instrumenten zijn voor het uitvoeren van de maatregelen. In dit opzicht benadrukt dit onderzoek dat vrijwillige inspanningen onvoldoende zijn om de positie van vrouwen te versterken en dat het meer een discretionaire bevoegdheid voor overheden blijft dan een beleid, waardoor positieve discriminatie niet afdwingbaar is.

Dit onderzoek stelt dat terwijl instellingen in principe hun steun voor positieve discriminatie hebben gegeven, de gegevens die verzameld zijn van instellingen, vragenlijsten en interviews laten zien dat er weinig verandering heeft plaatsgevonden in werkgelegenheid en hogere onderwijsinstellingen over een periode van tien jaar (2000-2010). Vrouwen zijn nog steeds werkzaam in laagbetaalde banen en blijven ondervertegenwoordigd in veel beroepen, met name in hoge posities. In dit verband moeten de begunstigden teleurgesteld zijn geweest over de manier waarop instellingen positieve discriminatie implementeren, bevorderen en bewaken. Zij geloven eerder dat positieve discriminatie een stukje propaganda is zonder tastbaar praktisch effect.

Uit het onderzoek bleek ook dat zowel de begunstigden als niet-begunstigden beperkte kennis hebben omdat er misverstanden bestaan over het concept van positieve discriminatie. Als gevolg hiervan wordt positieve discriminatie nog steeds gezien als een gunst van de overheid voor vrouwen in plaats van een recht. Het misverstand kan ook hebben bijgedragen aan de vertraging bij het bereiken van gelijkheid en het gebrek aan inzet voor de effectieve uitvoering van maatregelen.

Verder moet worden benadrukt dat de perceptie is dat positieve discriminatie slecht geïmplementeerd wordt in de onderzochte instellingen – deze hebben niet genoeg gedaan om vrouwen te stimuleren om te profiteren van positieve discriminatie maatregelen door middel van reclame, werving of promotie. Er zijn geen adequate studies uitgevoerd door de onderzochte instellingen over de uitvoering van positieve discriminatie, en dus is het moeilijk om verbeteringen of resultaten van positieve discriminatie in kaart te brengen bij
het waarborgen van gelijkheid van vrouwen. Hoewel de grondwet en federale en regionale wetten, met inbegrip van wetgeving omtrent hoger onderwijs en de ambtenarij, positieve discriminatiebepalingen bevatten, heeft een gebrek aan institutionele uitvoering er voor gezorgd dat positieve discriminatie niet effectief is geweest. Het huidige institutionele en juridische kader van positieve discriminatie lijkt zwak en vaak inconsistent te zijn. De conclusies die in het onderzoek naar voren zijn gekomen pleiten duidelijk voor de noodzaak van een gestandaardiseerde procedure voor de succesvolle implementatie van positieve discriminatie.

De belangrijkste bevindingen van dit onderzoek tonen aan dat de individuele, institutionele en maatschappelijke opbouwprogramma's nauwelijks konden toestaan dat positieve discriminatie effectief van toepassing zou zijn. In dit verband is het duidelijk dat positieve discriminatie is geïntroduceerd voordat de noodzakelijke voorbereidingen getroffen waren, en dat er van bewustzijn, gedragsveranderingen en materiële omstandigheden om positieve discriminatie uit te kunnen voeren en de effecten op te kunnen volgen amper sprake was. Een belangrijke constatering in dit onderzoek is dat het gebrek aan betrokkenheid van en bij vrouwen belemmerend werkt voor de effectieve uitvoering van positieve discriminatie. Het blijkt duidelijk uit dit onderzoek dat er een gebrek aan adequate, actieve en zichtbare steun van vrouwen is aangezien zij niet betrokken zijn bij coherent uitgewerkte programma’s om ervoor te zorgen dat de positieve discriminatie maatregelen vertaald worden in een duurzaam strategisch voordeel voor deze vrouwen. In dit verband is de rol van vrouwen bij het actief participeren in het beleid en relevante activiteiten voor wat betreft positieve discriminatie maatregelen en uitvoering daarvan beperkt. Daarom kan veilig worden geconcludeerd dat de begunstigden van positieve discriminatie, uitvoerende instellingen en de maatschappij in het algemeen onvoldoende bereid lijken te zijn om plaats te bieden voor de maatregelen. Vandaar dat positieve discriminatie slechts een geïmporteerd concept blijft dat zijn doelstellingen zocht te bereiken zonder te worden geïnternaliseerd door alle belanghebbenden.
Aanbevelingen

Na de bovengenoemde conclusies te hebben getrokken, doet de onderzoeker hieronder aanbevelingen voor effectieve positieve discriminatie, die zijn onderverdeeld in drie fasen: de planningsfase, de uitvoeringsfase en de controlefase.

1. Tijdens de planningsfase, moet een juridisch en institutioneel kader worden gezocht voor een duurzaam programma. In deze fase moeten mogelijke activiteiten worden opgenomen die richtinggevend kunnen zijn. Meer specifiek dient de planningsfase een reeks specifieke interventiestrategieën te omvatten; onder meer het concept van positieve discriminatie definiëren, doelen stellen, zorgen voor een goed begrip van positieve discriminatie maatregelen, strategieën ontwikkelen, de procedures en tijdschema's bepalen om de doelstellingen te bereiken, rekening houden met de beschikbaarheid van middelen voor het uitvoeren van de voorgestelde activiteiten, strategieën bepalen voor informatie- en communicatietechnologie, voortgang en knelpunten identificeren, oplossingen formuleren en de relevante instanties voor de monitoring en evaluatie van het programma bepalen.

2. Zoals al eerder is opgemerkt, is kennis van de beginselen en praktijken van positieve discriminatie van essentieel belang voor een succesvolle implementatie. Hieruit volgt dat een effectieve positieve discriminatie beleid afhankelijk is van de betrokkenheid van alle belanghebbenden. Dit is alleen mogelijk als studenten, werknemers en instellingen de noodzaak van positieve discriminatie hebben erkend en haar doelen hebben geaccepteerd. In dit verband zijn informatie en communicatie belangrijke instrumenten voor het waarborgen van ondersteuning en acceptatie van positieve discriminatie. Het is essentieel dat de redenen en het doel van positieve discriminatie volledig wordt gecommuniceerd, begrepen en aanvaard door de instellingen. Door middel van communicatie van informatie zien alle belanghebbenden de relevantie en het belang in van positieve discriminatie om geslachtsgelijkheid te waarborgen. Vrouwen moeten zichzelf zien als actieve deelnemer in het proces. Ze moeten bijvoorbeeld positief reageren op de mogelijkheden voor opleiding, ontwikkeling en betere carrièrekansen. Ook moeten mannen de zorgen en waarden van vrouwen begrijpen en vrouwen steunen door een
positieve houding om zo de doelstellingen van het beleid te kunnen bereiken. Centraal voor het ontwikkelen van een gevoel van eigenaarschap staat de actieve deelname van studenten en werknemers. Positieve discriminatie zou daarmee stevig verankerd moeten worden in het systeem en niet een van buiten opgelegd beleid moeten zijn.

3. Bewustmaking speelt een centrale rol in het begrijpen van de principes die ten grondslag liggen aan positieve discriminatie. Bewustzijn zou kunnen worden bereikt door middel van formele educatieve programma's en informele opleidingen. Het gaat om een reeks praktische instrumenten en richtlijnen, zoals trainingen, workshops, conferenties, seminars, nieuwsbrieven en publicaties. Deze campagnes moeten zich specifiek richten op het elimineren van schadelijke traditionele praktijken tegen vrouwen, het doorbreken van stereotyopen en de misvattingen en misverstanden zien te overwinnen door mensen vertrouwd te maken met de doelen en beginselen van positieve discriminatie. In het kort, bewustzijn creëren en informatie verspreiden omtrent de bevordering van de rechten van vrouwen is onmisbaar voor de effectieve uitvoering van een positieve discriminatie beleid. Tenzij deze kwesties zorgvuldige overweging krijgen, zal positieve discriminatie zwak blijven, waardoor er louter cosmetische veranderingen kunnen komen. Het is deshalve onvermijdelijk dat dergelijke strategieën zorgvuldig moeten worden gepland en gevolgd om de reeds vermelde doelstellingen te bereiken.

4. Hoewel het beginsel van positieve discriminatie, zoals eerder vermeld, stevig is gevestigd in de Grondwet, wordt het nauwelijks ondersteund door wetten en beleid. Het feit dat toch de Grondwet noch enige andere wetgeving een definitie van positieve discriminatie biedt, maakt het moeilijk de grondwettelijke bepaling over positieve discriminatie te interpreteren en uit te voeren. In gevallen waarin het concept van positieve discriminatie niet duidelijk is omschreven zouden rechters het moeilijk vinden om te bepalen wat wel of niet onder positieve discriminatie valt. Bovendien is er geen specifiek en alomvattend beleid of wetgeving ontwikkeld om de daadwerkelijke uitvoering van de grondwettelijke bepalingen te realiseren. Bepalingen die voorzien in positieve discriminatie zijn verspreid over verschillende wetten en regels. Positieve discriminatie zal slechts een papieren tijger blijven zonder de nodige juridische ondersteuning. Daarom is het zeer belangrijk om positieve discriminatiewetten aan te
nemen die instellingen helpen bij het ontwikkelen en implementeren van positieve discriminatie plannen die op maat gemaakt zijn voor hun eigen specifieke omstandigheden. Vervolgens moeten uitvoerende instellingen zoals hoger onderwijsinstellingen en het ambtenarenapparaat praktische richtlijnen voor het uitvoeren van en het toezicht houden op hun positieve actieplannen ontwikkelen.

5. De uitvoeringsfase omvat het ontwerpen van verschillende strategieën van implementatie om een effect te hebben op de doelen die in de planningsfase zijn geïdentificeerd. Meer in het bijzonder omvat dit maatregelen zoals het vaststellen van de taken en verantwoordelijkheden van de personen en instellingen die betrokken zijn bij elke activiteit; onderhouden van een database van begunstigden; identificeren van de vereiste financiële en personele middelen en een tijdschema vaststellen voor de afronding van de activiteit. Het is gebleken dat de instellingen niet een specifieke afdeling of eenheid hebben die de uitvoering van positieve discriminatie controleert. In dit verband is de oprichting van een positieve discriminatie-commissie in elk ministerie, die verantwoordelijk is voor de bevordering van de positieve discriminatie maatregelen van instellingen, van cruciaal belang. Daarnaast moet de afdeling P&O regelmatige communicatie onderhouden en zorgen voor bijgewerkte beleidsplannen voor de positieve discriminatie-commissie. Deze commissie moet zorgen voor de integratie van het positieve discriminatiebeleid in de ontwikkeling van P&O strategie. Meer specifiek kan de commissie verantwoordelijk zijn voor het herschrijven van vacatures om meer vrouwen te bereiken, voor de monitoring van de voortgang van positieve discriminatie en een rol spelen bij de selectie, werving, promotie en benoeming van werknemers. Ook het opzetten van een ‘bureau positieve discriminatie’ in elke hoger onderwijsinstelling die verantwoordelijk is voor de uitvoering en het toezicht op een positieve discriminatie beleid binnen hun instellingen, kan positieve discriminatie in de praktijk werkelijk maken.

6. De controle fase omvat een beoordeling en evaluatie van de vorderingen van positieve discriminatie in het bereiken van de vastgestelde doelen. Instellingen dienen controle, rapportage en evaluatieregelingen te ontwikkelen, gericht op de evaluatie van de uitvoering en de naleving van het beleid. Een dergelijke evaluatie zal verder inzicht
geven in de vooruitgang die is geboekt en in de resterende belemmeringen die moeten worden aangepakt voor de bevordering van positieve discriminatie. Instellingen zullen daarom de wijze van toezicht op de uitvoering en het meten van de impact van positieve discriminatie vast moeten stellen. Een dergelijk controlemechanisme moet verder gaan dan kwantitatieve aannames, en zou ook kwalitatieve veranderingen moeten omvatten. Vandaar dat het verslag onder meer de uitgevoerde activiteiten en de behaalde resultaten moet bevatten.

7. Instellingen dienen ook procedures voor het afhandelen van klachten te ontwikkelen voor de evaluatie en aanpak van klachten. Adequate interne klachtenprocedures moeten worden vastgesteld voor de begunstigden die menen dat hun recht op positieve discriminatie geschonden wordt. In dit verband is het van belang om een voorziening te hebben voor het oplossen van conflicten die kunnen ontstaan als gevolg van de uitvoering van het positieve discriminatiebeleid. Al het mogelijke wordt gedaan door instellingen om alle klachten op te lossen zonder vertraging en op een eerlijke en consequente manier. Het inbrengen van een boetebeding om niet-naleving te bestraffen zou bovendien de tenuitvoerlegging vergemakkelijken.

Naast deze zeven aanbevelingen is het aanbevelingswaardig als het ministerie van Vrouwenzaken belast zou worden met een taak om de controle en evaluatie van de uitvoering van positieve discriminatie met het oog op het waarborgen van de voortgang binnen instellingen. Voorts dient te worden benadrukt dat de Federal Civil Service Agency, die de taak heeft om gegevens te verzamelen over de ambtenaren van zowel de federale regering als de regionale bureaus voor overheidsambtenaren, verwacht wordt naar geslacht uitgesplitste gegevens te produceren uit het jaarverslag van de Personnel Statistics Office van zowel de federale als regionale overheden. Ook hogere onderwijsinstellingen moeten statistieken van positieve discriminatie bijhouden. Het Zuid-Afrikaanse model kan worden beschouwd als een van de ‘best practices’ voor de succesvolle implementatie van positieve discriminatie.

Ten slotte heeft dit onderzoek specifiek lacunes geïdentificeerd in de registratie van de beschikbare gegevens met betrekking tot de uitvoering van positieve discriminatie in
instellingen, aangezien het aantal vrouwen dat is geselecteerd, aangeworven en bevorderd door middel van positieve discriminatie niet duidelijk in de statistische rapporten aangegeven is. Dit bemoeilijkt de op geslacht gebaseerde analyse, controle en evaluatie van beleidsinstrumenten. De mechanismen die landelijke gegevens moeten bijhouden hebben in het algemeen problemen ondervonden. Het zou kunnen worden beweerd dat de onderzochte instellingen slechte primaire gegevens en informatiesystemen hebben die vragen om een betere en gestandaardiseerde systemen. De onderzoeker hoopt dat dit onderzoek bijdraagt aan verbetering van de kennis over positieve discriminatie in Ethiopië.
Annex 1: List of interviews

Abay Akemachew, Head of Center for Gender and Development, ECSU, April 8, 2010.

Amare Debebe, Assistant Dean College of Social Studies Addis Ababa University, November 6, 2006.

Almaz Kebede, a civil servant in Non- Governmental Organization, April 6, 2008.

Ametemariam Geberemichael, Deputy Head of Tigray Regional State Women’s Affairs Bureau, August 23, 2006.


Dereje Tegyibelu, a Human Resource Management Department Head in the Civil Service Commission, March 16, 24 and April 25, 2008.

Fasil Nahome (PhD), legal advisor to the Ethiopian Prime Minister, April 15, 2010.


Gashaw Kassa, Head of the Scholarship and Assessment Centre in the Ministry of Foreign Affairs, May 18, 2010.

Girmay Alemayheu, lecturer at Semara University, March 2, 2009.

Hailemichael Abera (PhD), President of ESCU, April 08, 2010.

Halima Mohammed (Ambassador), Women’s Affairs and Affirmative Action General Directorate at MOFA, September 23, 2009.

Kiros Hagos, Secretary of Tigray Women’s Association, August 23, 2006.

Meberat Teklemariam, Semara University Gender Office Coordinator, February 2, 2009.

Meyru Humed, Head of the Afar Regional State Capacity Building Bureau, August 13, 2008.

Mohammed Habib, Ex-Administrative Vice President of AAU, May 4, 2006.

Nuru Mohammed, an expert in Afar Regional State Women’s Affairs Bureau, Feb. 8, 2007.

Roman G/selassie, Head of Tigray Regional State Women’s Affairs Bureau, May 9, 2008.

Samaon Khassun (PhD), Academic Vice-President of ECSU, February 19, 2009.

Shewa Amin, an expert in Women’s Affairs and Affirmative Action Directorate at MOFA, April 7, 2010.

Shewaye Eteku, Vice Speaker of House, Tigray Regional State, August 23, 2006.

Solomon, Head of Administrative Tribunal in the Civil Service Commission, April 14, 2008.

Tigist Araya, Head of Women’s Affairs Departments in Mekelle University,
February 19, 2006 and March 17, 2008.

Tedros Seyoum, Ex-Registrar of ECSU, March 24, 2006.

Ubah Mohammed, Ex-State Minister of Ministry of Women’s Affairs, February 12, 2008

Wesen G/Hiwot, an expert in primary education in the Afar Regional State Education Bureau, February 6, 2007.
Annex 2: Questionnaire

Part I: General

1. Sex........
2. Age........
3. Level of Education............
4. Mark on the box that fits your position
   Parliamentarian...........        Student........... Instructor...........
   Civil Servant...........        Justice Department............
   Others Specify.............

Part II Questions related to understanding and relevance

5. How do you understand the phrase “Affirmative action”? 
   ………………………………………………………………………...

6. Do you believe that affirmative action for women is necessary in Ethiopia? If yes, Why? If No, Why not? 
   ………………………………………………………………………...

7. Do women have equal opportunities as men with regard to access to education and job opportunities in your region? If No, Why not? 
   ………………………………………………………………………...

8. Should affirmative action be given to all women regardless of their income, geographical location, prior discrimination etc? If Yes, Why? If No, Why not? 
   ………………………………………………………………………...

9. Do you support the current affirmative action programs in education and employment sectors? If No, Why not? 
   ………………………………………………………………………...

10. Why do you think that women are more vulnerable to unemployment in your region? 
    ………………………………………………………………………...

11. Do you think that the rationale behind affirmative action for women reflect the present social realities? If No, Why not? 
    ………………………………………………………………………...
12. Do you think that lifting barriers to educational and job opportunities is enough to attain equality of the sexes? If No, Why not?
…………………………………………………………………………………………

13. What is affirmative action for you?
   a. It is a right……………………
   b. It is a support or help………………
   c. It is a gift………………
   d. Others, Specify…………………………

14. Why do you think that women are entitled to affirmative action?
   a. To rectify the effects of prior discriminatory acts…………………………
   b. Because they are weak and incapable………………………………………
   c. To bring gender equality……………………………………………………
   d. A and C are answers…………………………………………………………

15. Affirmative action is:
   a. A new concept………………………………………………………………
   b. It was practiced in our culture………………………………………………
   c. If your answer is ‘b’, please give examples of customary practices that gives affirmative action for women in your culture…………………………

16. What is the best way to bring gender equality?
   a. Lifting all the barriers against women……………………
   b. Providing affirmative action…………………………
   c. Repealing discriminatory laws……………………………………
   d. All of the above

Part III Questions related to effectiveness

17. Do you believe that beneficiaries of affirmative action are equally competent as other candidates? If Yes, Why? If No, Why not?
…………………………………………………………………………………………

18. Is affirmative action for women being implemented effectively in your institution? If No, Why not?
…………………………………………………………………………………………

19. Since when has increased women’s participation in education and employment in your institution? Why do you think is the reason?
…………………………………………………………………………………………
20. How does your institution implement affirmative action programs for women?
   Fully…….. Broadly…….. Partly……..Never implemented……………
   I do not know…………

21. Should beneficiaries of affirmative action programs for women be chosen from among equally qualified candidates? If Yes, Why? If No, Why not?
   …………………………………………………………………………………

22. Don’t answer this question if you are not a female. Do you consider yourself as victims of prior discrimination against women in the educational system or in the employment sector? If Yes, Why? If No, Why not?
   …………………………………………………………………………………

23. Who is responsible to monitor and evaluate affirmative action programs implemented in your institution?
   a. Human resource department……………………
   b. Women’s affairs department…………………..
   c. Senior officials………………………………
   d. I don’t know………………………………

24. How often are affirmative action programs implemented in your institution being monitored and evaluated?
   a. Regularly………………………………
   b. Sometimes……………………………..
   c. Not at all………………………………
   I don’t know………………………………

25. What kind of affirmative action is more relevant to bridge the gender gap?
   a. A quota system……………………………..
   b. Setting a goal and timetables…………………
   c. I don’t know………………………………

26. Does your institution hire less qualified women than more qualified men?
   …………………………………………………………………………………

27. Is there sufficient pool of women candidates for advertisement of a job in your institution? If your answer is No, Why not?
   …………………………………………………………………………………

Part IV Questions related to challenges
28. Women are given adequate priority as beneficiaries of affirmative action programs. What is your response to this statement?
29. Please give your reasons for your response in question No. 28.
...................................................................................................................

30. Do you believe that there is institutional commitment to implement affirmative action? If your answer is No, Why Not?
...................................................................................................................

31. What is the attitude of your male colleagues when women become beneficiaries of affirmative action programs?
...................................................................................................................

32. Please answer this question if you were benefited from the program. How do you feel on becoming beneficiaries of affirmative action programs?
   a. Low-self esteem ..............................
   b. Being stigmatizes..............................
   c. Positive self-image..............................
   d. Nothing...........................................

33. Why do you think is the reason for your uncomfortable feeling on becoming beneficiaries of affirmative action programs?
...................................................................................................................

34. Are there any grievance procedures for those women who were dissatisfied with the implementation of affirmative action in your institution?
...................................................................................................................

35. What do you think is the main challenge for the unsuccessful implementation of affirmative action programs in your institution?
   a. Lack of enabling laws..............................
   b. Lack of coordination..............................
   c. Lack of acceptance/commitment..............
   d. Lack of resources.................................
   e. Lack of appropriate bodies/leadership........
   f. Others, please specify..............................
Annex 3: List of Tables

Table 1: Admission Grade pointes to higher education

<table>
<thead>
<tr>
<th>Academic year</th>
<th>Degree</th>
<th>Diploma</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991/92</td>
<td>Male: 3.4, Female: 3.2</td>
<td>Male: 3.2, Female: 3.0</td>
</tr>
<tr>
<td>1992/93</td>
<td>Male: 3.2, Female: 3.2</td>
<td>Male: 3.0, Female: 2.8</td>
</tr>
<tr>
<td>1993/94</td>
<td>Male: 3.2, Female: 3.0</td>
<td>Male: 3.0, Female: 2.8</td>
</tr>
<tr>
<td>1994/95</td>
<td>Male: 3.2, Female: 3.0</td>
<td>Male: 3.0, Female: 2.8</td>
</tr>
<tr>
<td>1995/96</td>
<td>Male: 3.2, Female: 3.0</td>
<td>Male: 3.0, Female: 2.8</td>
</tr>
<tr>
<td>1996/97</td>
<td>Male: 3.2, Female: 3.0</td>
<td>Male: 3.0, Female: 2.6 &amp; 2.8</td>
</tr>
<tr>
<td>1997/98</td>
<td>Male: 3.2, Female: 3.0 &amp; 2.8</td>
<td>Male: 3.0, Female: 2.6</td>
</tr>
<tr>
<td>1998/99</td>
<td>Male: 3.2, Female: 3.2</td>
<td>Male: 3.0, Female: 2.8</td>
</tr>
</tbody>
</table>

Source: Ministry of Education

Table 2: Summary of female students’ admission to higher education: 2004-2009

<table>
<thead>
<tr>
<th>Academic year</th>
<th>Total students admitted</th>
<th>%Female students admitted without affirmative action</th>
<th>%Female students admitted with affirmative action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>28056</td>
<td>26.29</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>31923</td>
<td>30.18</td>
<td>10.48</td>
</tr>
<tr>
<td>2006</td>
<td>36465</td>
<td>27.15</td>
<td>8.47</td>
</tr>
<tr>
<td>2007</td>
<td>40976</td>
<td>28.47</td>
<td>1.9</td>
</tr>
<tr>
<td>2008</td>
<td>56238</td>
<td>28.02</td>
<td>9.82</td>
</tr>
<tr>
<td>2009</td>
<td>76507</td>
<td>42.62</td>
<td>14.69</td>
</tr>
</tbody>
</table>

Source: Adopted from the Ministry of Education (unpublished)
Table 3: Faculty of Business and Economics

<table>
<thead>
<tr>
<th>Departments</th>
<th>No of students that could be assigned</th>
<th>No of students chosen the department</th>
<th>Quota reserved for women</th>
<th>Women placed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No of students</td>
<td>1st choice</td>
<td>2nd choice</td>
<td>3rd choice</td>
</tr>
<tr>
<td>Administrative service management</td>
<td>85</td>
<td>39</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Management</td>
<td>89</td>
<td>35</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Economics</td>
<td>69</td>
<td>6</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Accounting</td>
<td>80</td>
<td>12</td>
<td>7</td>
<td>9</td>
</tr>
</tbody>
</table>

Source: Semara University, Gender department, 2008/09

Table 4: Trends of graduates from all programs of higher education institutions

<table>
<thead>
<tr>
<th>Year</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006/07</td>
<td>24,474</td>
<td>5,371</td>
<td>29,845</td>
<td>2,412</td>
<td>259</td>
<td>2,671</td>
</tr>
<tr>
<td>2007/08</td>
<td>38,048</td>
<td>9,931</td>
<td>47,979</td>
<td>2,380</td>
<td>284</td>
<td>2,664</td>
</tr>
<tr>
<td>2008/09</td>
<td>39,231</td>
<td>16,539</td>
<td>55,770</td>
<td>2,856</td>
<td>401</td>
<td>3,257</td>
</tr>
<tr>
<td>2009/10</td>
<td>51,300</td>
<td>15,699</td>
<td>66,999</td>
<td>4,194</td>
<td>679</td>
<td>4,873</td>
</tr>
<tr>
<td>2010/11</td>
<td>54,783</td>
<td>20,565</td>
<td>75,348</td>
<td>5,351</td>
<td>899</td>
<td>6,250</td>
</tr>
<tr>
<td>AAGR</td>
<td>21.3</td>
<td>38.0</td>
<td>24.9</td>
<td>21.3</td>
<td>35.0</td>
<td>22.9</td>
</tr>
</tbody>
</table>

Source: Educational Statistic Annual Abstract 2010/11 Ministry of Education
Annex 4: Sample format of training advertisement of Ministry of Foreign Affairs

1. Academic qualification
2. Two or more years of service in the institution
3. A candidate who can fulfil all the requirements of the scholarship granting body

Remark: Women applicants are encouraged to apply.

Internal regulations

1. Work experience 30%
2. Educational qualification 30%
3. Job evaluation 30%
4. written exam 10% (optional)