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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 on the Rights 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 Recommendation³² 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):

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: 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 right. 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.o, “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,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.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)

³³ Djibouti, Somalia, Eritrea, Sudan, Ethiopia, Uganda and Kenya are member states.

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 birr³⁶ 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 carrier 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