

DEBRE BERHAN UNIVERSITY



COLLEGE OF LAW

RESEARCH TITLE: Implementation of Affirmative Action Schemes for Women under the Ethiopian Legal and Policy Frameworks: the case of women civil servants working in Debre Berhan Town.

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Contents

Abstract.....	iv
Acknowledgment.....	vi
Acronyms.....	vii
Declaration.....	viii
CHAPTER ONE: Introduction.....	1
1. Background of the study.....	1
1.2. Statement of the Problem.....	3
1.3. Objectives of the study.....	3
1.3.1. General objectives of the research.....	3
1.3.2. Specific objective of the research.....	3
1.4. Research Questions.....	4
1.5. Significant of the Study.....	4
1.6. Scope and limitation of the study.....	5
1.7. Research Methodology.....	5
1.7.1. Methods of Data Collection.....	5
1.7. 2. General population.....	5
1.7. 3. Sample Population.....	6
1.7.4. Sample Techniques.....	6
1.7.5. Method of Data Analysis.....	6
1.8 Organization of the study.....	6
CHAPTER TWO.....	7
General Overview of Affirmative Action.....	7
2.1. The Meaning of Affirmative Action.....	7
2.2. Evolution and Development of Affirmative Action.....	12
2.3. Arguments For and Against Affirmative Action.....	14
2.3.1. Arguments for Affirmative Action.....	14
2.3.2Arguments against affirmative action.....	15

CHAPTER THREE.....	17
Legal Analysis in Relation to Affirmative Action.....	17
Introduction.....	17
3.1 International legal System.....	17
3.1.1. The Convention on the Elimination of All forms of Discrimination against Women (CEDAW).....	17
3.2 Regional Legal System.....	19
3.2.1 Protocol to the African Charter on Human and Peoples Right on the Rights of Women in Africa (PACHPRRWA).....	19
3.3 National Legal Systems.....	21
3.3.1. The PDRE Constitution.....	21
3.3.2. The FDRE constitution.....	22
3.3.3 Federal Civil Servants Proclamation NO 515/2007.....	25
3.3.4. The Amhara National Regional State Civil Servant's Revised Proclamation No/71/2010.....	26
3.3.5 Amhara Regional State Civil Servant Selection Directive.....	26
3.3.6 Affirmative Measures Directive in Civil Service System.....	26
CHAPTER FOUR.....	29
Implementation of Affirmative Action Schemes for Women Civil Servants Working In Debre Berhan Town.....	29
Introduction.....	29
4.1. Awareness.....	30
4.2. Attitudes towards affirmative action scheme.....	31
4.3. The implementation of affirmative action scheme in sector offices.....	33
4.4. Practical challenges in implementing affirmative action.....	34
4.5. Factors for such challenges.....	35
4.5.1. Bias /Discrimination.....	35
4.5.2. Negative attitudes towards affirmative action.....	36
4.5.3. Corruption.....	36
4.6 Women's Level of Satisfaction on affirmative measures.....	37
CHAPTER FIVE:.....	38
Conclusion and Recommendations.....	38
5.1. Conclusion.....	38
5.2 Recommendations.....	39

Bibliography.....	41
Annexs.....	43

Abstract

This study examines the implementation of affirmative action schemes for women under the Ethiopian legal and policy frameworks in Debre Berhan town Civil Service Offices. It attempts of analysis the right of women civil servants as it has been recognized under the Constitution of the Federal Democratic Republic of Ethiopia, Federal Civil Servants Proclamation, Amhara National Regional State Civil Servants Proclamation, International human right instrument and effect is made to observe the implementation of affirmative action on the ground within the Civil Services. Accordingly, data was collected from twenty Civil Service Offices of Debre Berhan town and questioners were distributed to 62 women civil servants. Interviews were also made with the main law executor or main officer. The research mainly focuses on implementation of affirmative action policies in Ethiopia. In conducting this study, both qualitative and quantitative methodologies were employed by the researcher.

The core findings of the study are: firstly, it finds out most affirmative action schemes are not properly implemented such as promotion and transfer. Secondly, the study indicates that there are numerous challenges in implementing affirmative action in Debre Berhan town civil service offices. Finally, the study also reveals that the overall implementation of affirmative action schemes has been below satisfactory level.

Acknowledgment

An academic research could not be made by the efforts of only two individuals rather it demands the cooperation and contribution of other individuals, either directly or indirectly. Accordingly, we duly appreciate all people who support us by providing valuable advices and ideas in the doing of this research paper.

First, we thank our God, because nothing more can be done without his will.

Next to this we want to express our gratitude to our genuine and committed advisor, AnmawDemisie for his unlimited support, encouragement and guiding us throughout the study.

We also thanks our parents for their greater contribution to this study by supplying their money

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Acronyms

ACRWC: African Charter on the Rights and Welfare of the Child

ANRSCSRP: Amhara National Regional State Civil Servants Revised Proclamation

AU: African Union

CEDAW: Convention on the Elimination of All forms of Discrimination Against Women

FCSP: Federal Civil Servants Proclamation

FDRE: Federal Democratic Republic of Ethiopia

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ILO: International Labor Organization

NGOs: Non-Governmental Organizations

PACHPRRWA: Protocol to the African Charter on Human and People's Right on the Rights of Women in Africa

PDRE: Peoples Democratic Republic of Ethiopia

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNESCO: United Nations Economic, Social and Cultural Organization

USA: United States of America

WWI: World War First

Declaration

We, Yohannes Alemu and Yibeltal Desta, declared that this research is our work, has not been presented for a Degree program in any other universities and that all sources or a material used for this study have been acknowledged. This thesis is submitted for partial fulfillment of LL.B Law.

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CHAPTER ONE: Introduction

.1. Background of the study

Now days, affirmative action schemes have a recognition throughout the world. These schemes have been recognized by different international legal instruments (including CEDAW) and national laws. Affirmative action was an outcome of the 1960's American civil right movements, intended to provide equal opportunities for members of minority group and women in education and employment.¹ As different studies shows, there is no universally accepted definition of affirmative action. For instance, it (known as reservation in India and Nepal and positive discrimination in the UK; also known in narrow context as employment equity in Canada and South Africa) is the policy of favoring members of a disadvantaged who suffer or have suffered from discrimination with in culture.² This indicates that the concept of affirmative action have different understanding in different countries.

Affirmative action defined as the practice of improving employment and education opportunities for members of minority groups, including those discriminated against because of their sex, race, color, or religion.³ The nature of affirmative action policies varies from country to country.

Some countries, such as like India, use a quota system, whereby a certain percentage of government jobs, political positions, and school vacancies, must be reserved by for members of a certain group. In some other countries where quotas are not used, minority group members are given preference or special consideration

¹[www.ncs.org/research /education/affirmative action overview.asp](http://www.ncs.org/research/education/affirmative%20action%20overview.asp). last visited on April ,15

²[https://en.m.wikipedia.org/wiki/affirmative action](https://en.m.wikipedia.org/wiki/affirmative%20action) last visited on April,15

³ [https://legal dictionary.net/affirmative action](https://legal%20dictionary.net/affirmative%20action) last visited on April 15

in selection processes. In Ethiopia, both quotas and non-quotas are used depending on the nature of the occupation or job.

Affirmative action for women is explicitly stated under article 4 of the Convention on the Elimination of All Forms of Discrimination against women, which read as:

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 separate standard; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.⁴

Affirmative action under the national legal system of Ethiopia was introduced the first time during the Dergue regime (1974-1991). Article 36(2) of the PDRE constitution provides that the state shall provide women with special support, particularly education, training and employment so that they participate in political, economic, social and cultural affairs on an equal basis with men.

After the downfall of the military regime, the transitional period (1991-1994) launched various policies and laws. Among these, women's policy, education and training policy, social policy and the population policy were some of them.

Currently, the FDRE constitution under article 35(3) recognizes affirmative action and relatively speaking it is more effective than the previous two decade in scope and implementation. However, still now special measures give to women's are difficult to say satisfactory in implementation. For example in employment sector most employers seems to just use the phrase "women applicants are highly encouraged." It does not provide as to what affirmative action, is to be implemented. However, how and when do organizations encourage women in employment sector.⁵

⁴ Convention on the Elimination Of All Forms Of Discrimination Against Women Adopted By Un General Assembly Resolution On 18 December 1979, Art.4.

⁵SelamGebretsion, "The Application of affirmative Action in Employment action", The Reporter, October 3, 2015

According to the FDRE constitution, the right to affirmative action becomes constitutionally guaranteed right for women. Among other things, civil service offices and right to affirmative measures has strong relation. Since, in Ethiopia civil service offices are one of the places where affirmative action policies are to be implemented. Civil service sectors should dedicate themselves to the effective implementation of affirmative action as the essential element of their task. Among those civil service institutions or sectors in Ethiopia Debre Berhan civil service offices are one of them. Currently, in Debre Berhan town civil services there are about 1706 women civil servants.

Therefore, this paper tries to find or investigate the main legal and practical problems observed during implementation of affirmative action schemes in those civil service offices of the town.

1.2. Statement of the Problem

Affirmative action is a right of vulnerable groups in general and women's in particular. This special treatment is indispensable for those groups so long as the deep-rooted gender based discrimination is not eliminated.

Though the FDRE constitution and CEDAW granted women to affirmative measures, to overcome the historical legacy of inequality and discrimination suffered by women, still there is no satisfactory results have been achieved. In Ethiopia, there are no detailed and comprehensive laws to implement the principle of affirmative action schemes for women. Due to this reason, affirmative measures do not uniformly applied throughout the country in different sectors such as employments. There is no specific organization that evaluates and monitors the effective application of affirmative action for women⁶.

This resulted the overall implementation of affirmative action schemes has been below satisfactory level. Women's right to affirmative measures is one of the

⁶Ibid

fundamental rights that are enshrined under international, regional and national instruments. However, there are a certain practical challenges in Ethiopia that need to be consistent with those instruments. Accordingly, in our study i.e. studies were not conducted in Debre Berhan town related to the implementation of affirmative action for women. This means that the problems related right to affirmative action for women in specific area of Debre Berhan Town are not yet studied. As a result, our research is targeted to assessing or examining the challenges during implementation of affirmative action in Debre Berhan Town and possible recommendations to such challenges we investigated.

1.3. Objectives of the study

1.3.1. General objectives of the research

The general objective of the research is to examine the law vis-à-vis the practice of affirmative action.

1.3.2. Specific objective of the research

This research has the following specific objectives:

- To asses and analyze the rule of the existing international, regional and national instruments in preserving the right to affirmative measures.
- To evaluate the current practical efforts of Debre Berhan town in the implementing affirmative measures in employments sector.
- To assess or examine the existing challenges in implementing those measures for women civil servants working in Debre Berhan Town .
- To suggest possible recommendations for the concerned bodies

1.4. Research Questions

To address the above-mentioned objectives of the study, the following research questions are formulated.

- i. Is the Ethiopian legal framework adequate in regulating affirmative action schemes?
- ii. What are the practical challenges facing during implementation of affirmative action?
- iii. What are the possible factors for such challenges?
- iv. What is the compatibility of the practice regarding right to affirmative measures for women civil servants with the standards set by international, regional and national laws?
- v. How can the affirmative action schemes be implemented?

1.5. Significant of the Study

The study hoped to make a good contribution with regard to the right of women to affirmative measures in Ethiopia in general and women's civil servants working in Debre Berhan town in particular. Moreover, it sacks to make a contribution to the non-existence of the knowledge of the women specifically.

In addition to its contribution to efforts in encouraging its better implementation, intends to:

- ✓ Provide information for women as to what they may benefit from such schemes.
- ✓ Serves as an input for the legislature to amend the existing law based on the findings.
- ✓ Encourage the civil service office to formulate appropriate polices.
- ✓ It serves as a benchmark for those who need further study on this area
- ✓ It may provide further information to civil servants.

1.6. Scope and limitation of the study

The study will focus on the implementation of affirmative action in comparison with relevant laws. Further, the area of study is delimited to Debre Berhan town civil service office

As the researcher observed that in law library, there is a shortage of literature related to the proposed title.

Time constraint was also another limitation of the research as the remaining time is important for exit exam preparation. Financial constraints were also limitation in the course of doing the research because we have also incurred material and transportation cost.

1.7. Research Methodology

In conducting the research, we have used both qualitative and quantitative methodologies.

1.7.1. Methods of Data Collection

While conducting this research, the primary and secondary resources of data were used. The research was supported by semi-structured interviews with the managers of civil service offices and women civil servants. In addition, questionnaires' were distributed for women civil servants employed in Debre Berhan Town Administration.

1.7.2. General population

The required (targeted) populations of the study are women civil servants and the chief executor of the town administration civil service office. This is because the main role player in well implementing as well denying the constitutional right of women to affirmative measures lies on the chief executor

Therefore, the researcher will focuses on women to identify the problem related to implementation of affirmative action. Accordingly, we gathered the information from the Debre Berhan Town administration civil service office with regard to the number of women who are employed in different sectors. Therefore, based on the satirical data the number of civil servant women employed in 2009 E.C is 764.

1.7.3. Sample Population

According to sample size calculate/survey Monkey, it is calculated as:

Population size: 764

Confidence level (%) = 90%

Margin of error (%) = 10%

Sample size = 62 Here, we will take a number of (62) sample population from women civil servants employed in different sectors of the Town.

1.7.4. Sample Techniques

The subject of the study is women civil servants employed in DebreBerhan Town Administration in different sectors. The sampling method that we used was the random sampling for the purpose of convenience and avoiding bias among the population.

1.7.5. Method of Data Analysis

The data that we employed to analyze the collected data were both qualitative and quantitative methods. So as to conduct this research, we have deeply examined and employed data's and information through review literature about affirmative action, the perspective of international, regional and national laws, Debre Berhan Town administration civil service office rules and policies, books, articles, journals and internet websites. Accordingly, interviews were conducted with the concerned body of the sector office.

1.8 Organization of the study

Generally, the paper has comprised of (5) five chapters. The first chapter is about the general introduction of the study such as background of the study, statement of the problems, objectives of the study, research questions, significance of the study, scope and limitation of the study and organization of the study. The second chapter is all about reviewing literature that is pertinent to the study.

Chapter three dealt with affirmative action under international and national instruments or legal systems. Under chapter four, we have examined the practical implementation of affirmative action schemes for women civil servants working in DebreBerhan Town. Finally, under chapter five we have provided conclusions and recommendation.

CHAPTER TWO

General Overview of Affirmative Action

2.1. The Meaning of Affirmative Action

There is no universally accepted definition of the concept but generally programs aimed at ensuring equitable distribution of resources and benefits to disadvantaged members of a society are deemed to constitute affirmative action.

⁷As originally, defined, affirmative action implied mere neutrality in selection or decision making procedures. In other words, selection procedures of organizations were required to be free from subtle forms of discrimination to ensure equal employment opportunity.⁸ Through time, affirmative action came mostly to refer to overt, preferential use of group membership in selection and decision-making.⁹

Legal Dictionary defines affirmative action as “a set of procedures implemented for the purpose of eliminating discrimination in educational and employment opportunities”.¹⁰

Leff Dictionary of law also defines affirmative action program as:

⁷Burton M. Leiser, Liberty, justice and morals contemporary value conflicts, (1986), P.332

⁸Dinal Shelton and Dorothy Berndt, Sex discrimination in vocational education: Title IX and other remedies, California Law Review, Vol, (1998), P. 1255

⁹Proceedings of the Third ABA National Institute Equal employment opportunity Law, (1997), P. 25-26

¹⁰[https:// legal dictionary.et/ affirmative action /](https://legaldictionary.et/affirmative-action/), last Visited on Jun 2017

“An entity which has previously been guilty of unlawful discrimination (on the basis of race, sex, age....) is permitted and may be ordered to undertake an act or program of affirmative action to undo or at least mitigate the effects of such prior discrimination.”¹¹This definition points out the purpose of affirmative action to undo or at least mitigate the effects of prior discrimination. But it doesn’t seem to tell us much about what actually affirmative action.

Black’s law Dictionary defining affirmative action states:

“Positive steps designed to eliminate existing and continuing discrimination, to remedy lingering effects of past discrimination; and to create systems and procedures to prevent future discrimination; commonly based on population percentage of minority groups in particular area.” Factors considered are race, color, sex, creed and age.¹²

Sandra freedman defines affirmative action as

“the deliberate use of race or gender conscious criteria for the specific purpose of benefiting a group which has previously been disadvantaged on ground of race or gender”.¹³

Various legal instruments embody the concept of affirmative action in the letter of the law. The Convention on Elimination of Discrimination against Women (CEDAW) in article 4states

“... Temporary special measures aimed at accelerating defacto equality between men and women shall not be considered discrimination...” these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.”

Similarly, article 1(4) of the Convention on Racial Discrimination defines affirmative action in terms of,

¹¹.The Leff Dictionary of Law: A Frangment, Yale Law Journal, Vol. 94, part 8,

¹²Black’s Law Dictionary, Abridged 6th ed. (1991)

¹³Sandra Fredman, Reversing Discrimination, The Law Quarterly Review, Vol. 113, (1997), P.(1991

“... Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals... in order to ensure such group or individuals equal enjoyment or exercise of human rights and fundamental freedoms... and that they shall not be continued after the objectives for which they were taken have been achieved’ ‘Preferential treatment is by far the core issue, though not the only issue in the discussion of affirmative action. But preferential treatment raises different questions like preferential treatment for whom? For what reason?, By whom? Etc...

Therefore, we can define affirmative action in line with Black’s law dictionary because it has acceptable in law schools. Accordingly, affirmative action is a positive action designed to eliminate existing and continuing discrimination and to create or accelerate substantial equality between women and men.

a. For whom

This is an inquiry as to the possible beneficiaries of affirmative action. As it is evident from the third definition, affirmative action is meant to benefit members of a group who have been disadvantaged or discriminated based on race, and gender. But the group of beneficiaries cannot be limited to race and gender only. Discrimination on the basis of group membership such as color, age national origin and disability is also widespread. Thus these are also some of the factors that may be considered for the purpose of identifying beneficiaries.

b. For what reason?

Two questions can be raised here, what is the reason that calls for or justifies affirmative action? And what is the purpose of affirmative action programs?

The first definition tells us that is an entity, which has been found guilty of unlawful discrimination that engages in affirmative action. This says affirmative action can be taken, not out of nowhere but where there is an evidence of past or present and possibly future unlawful discrimination. The discrimination can

either be direct or indirect. Direct discrimination is the most straight forward form of discrimination. ¹⁴Indirect discrimination means imposing, certain conditions which can be met by more people of one group than another. ¹⁵There is also a distinction between individual and societal discrimination. Societal discrimination is sometimes claimed to be too amorphous¹⁶ to show the causal relationship between under representation of members of a disadvantaged group and the effect of discrimination.

This is so because societal discrimination is not institutionalized. But when it comes to gender based affirmative action, societal discrimination has often been accepted as a legitimate ground to embark on affirmative action.

Almost all the definitions state, in one way or another, the purpose of affirmative action to be correcting the effects of discrimination. But limiting the purpose of affirmative action to correcting imbalance, compensatory justice may not be a guarantee against future discrimination. For instance, if equal opportunity in promotion is granted to female employees from today onwards, it means that both male and female candidates will be considered equally for any future promotion opportunity. But, since up to now, they have not been equally treated; male employees are well ahead of female employees at least in terms of work experience, qualification and the like. As a result, whenever opportunities appear for promotion, in spite of the equal opportunity motto male employees have more advantage than females thus females. Thus female employees won't be in a position to catch up with the male ones. This will result in future discrimination, as the male employee will always be one step ahead of females. Affirmative action will enable to come to the starting line of the competition; both will be considered as having equal qualification; both will be considered as having equal qualification. Therefore through affirmative action any future discrimination can be prevented. ¹⁷

c. By whom?

¹⁴Ann Coote and Tess Gill, Women's Rights, (1977), P.22-23

¹⁵Paul Nicholls, Tolley's discrimination Law Hand book, (1991), P.63

¹⁶Jason M. Skaggs, Justifying Gender- Based Affirmative action under united states V. Virginia's "Exceedingly Persuasive Justification" standard, California Law Review, Vol. 86, (1998), P.1169 \

¹⁷Lesier, cited at note 7 above

This is a question as to which sector of the economy is responsible to implement affirmative action: is it the private sector or the public (government) sector? Affirmative action programs were principally developed by administrative agencies¹⁸ that are branches of the executive government. So, the coverage of affirmative action in the public sector is common in countries like USA, Canada, and India. The coverage becomes controversial when it comes to the private sector as the state will be requiring private employers to employ or train more females than male employees or more blacks than whites which in turn may not go in line with business objectives. This is so because the females or blacks may not be as qualified as qualified as or as competent and experienced as the males or whites. This in turn is the result of the effect of discrimination in education. Because of problem, the private sector is required to implement affirmative action obligations not directly but through the regulatory power of the state. Some countries like India totally relieve the private sector from affirmative action obligations.¹⁹

d. How?

Various types of affirmative action programs exist. Programs implemented in the different sectors like education, employment and the political field, differ to a certain extent though some of the forms are common to all sectors.

- Quota is a requirement that an employer hire a certain percentage of vacant places to member of a disadvantaged group.²⁰ It may take two forms.²¹
 - I. Alternative ratio or referral; where certain ratio of members of a disadvantaged group are hired for or admitted for every admitted member of the group that was free from discrimination.
 - II. Absolute preference of members of the disadvantaged group, successively filling positions with member of disadvantaged group until a certain

¹⁸Ibid

¹⁹Gadbis, Affirmative Action In India, Law and Policy, (1986), P.345

²⁰A title VII Symposium, Race Quotas as a form of affirmative action, Louisiana Law Review Vol. 34, (1973-4), P, 555

²¹Ibid

number is attained quota is a means of ending the statistical imbalance. It is the most controversial of all forms of affirmative action.²²

- Differential validation,²³ common in the field of employment, is the method by which test scores of members of a disadvantaged group are enhanced by the employer. "Differential validation is achieved when the employer independently determines the level of test scores needed for success on the job by minority as well the non-minority employees"²⁴
- Goal setting is a form of affirmative action that can be used in different sectors like education and employment. Unlike quota, this method imposes on ceiling on admission of members of a disadvantaged group in school and work place. It only requires that factors like race and sex be taken in to account along with factors that bear up on merit or qualification. ²⁵It is more flexible than quota. Goal is imposed along with directives as to the manner of achieving the goal. The implementation proceeds by taking in to account factors like the available number of minority group and qualifications. ²⁶
- To seek out and recruit qualified members of a disadvantaged groups ²⁷
- Supplementary training to qualify applicants from a disadvantaged groups²⁸
- Doing away with "test, standards or qualifications that are not reliable predictors of requisite performance"²⁹etc....

2.2. Evolution and Development of Affirmative Action

Identifying the exact time and place of origin of the concept, affirmative action, is difficult. This is partly because many authorities say that the concept originated and developed in the USA. However, there are others who claim that just after WWI, princes in India embarked on affirmative action programs ³⁰ though they

²²Brand Lindeman, Diversifying the work Place: Affirmative action the Private sector after 1991, south Dakota Law Review Vol. 47, No.3, (1996- 97), P.137-39

²³Ibid

²⁴Ibid

²⁵Ibid

²⁶Ibid

²⁷Ibid

²⁸Ibid

²⁹Ibid

³⁰Gadbis, as cited at note 19 above

bring forward very little to substantiate their claim. The term 'affirmative action' was used for the first time when President Kennedy employed it in Executive Order no 10925 on March 1961.³¹The 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."

This racial-neutral requirement moved towards preferences and quotas over the next decade. President Johnson, following on the footsteps of President Kennedy, issued Executive Order 11246, which continued the affirmative action obligation started earlier on by President Kennedy.³²

Guidelines in hiring that included "goals and time tables" were introduced during Johnson's presidency. Later on, congress in the Rehabilitation Act of 1973 and Vietnam Era Readjustment Assistance Act employed the concept. These Acts provided for affirmative action in the employment of handicapped persons and for veterans of the Vietnam War. President Kennedy's order had its genesis in orders issued by his predecessors, presidents, Roosevelt, Truman and Eisenhower.³³All these presidents, during their stay in office issued orders on fair employment practice that had a bearing either directly or indirectly on affirmative action. President Roosevelt, issued Executive order no8802 which in addition to prohibiting discrimination in government agencies and defense industries obliged government departments and agencies involved with Vocational and training programs for defense production to take special measures in administering such programs.³⁴

In 1964 Title VII was issued as part of the Civil Rights act, which empowered courts to authorize affirmative action remedies in the face of an intentional act of unlawful employment practice.³⁵This gave courts in the USA the opportunity to play a significant role in the development of the concept during the three decade to follow. Affirmative action was extended to women by Executive Order no.

³¹Natan Lerner. Group Rights and discrimination in international Law, (1991), P.163

³²Ibid, at note 9 above

³³Carol D. Rasnic, city of Richmond V.J.Acrososnco, Creighton Law Review, Vol. No.1 (1989-90, P.21

³⁴Ibid, cited at note 9 above

³⁵Ibid

11375 which amended Executive Order no. 11246 in 1967, by adding “sex” to the list of protected categories.³⁶

The concept spread and gained acceptance in other countries like Canada, Australia, India, South Africa... in India, the 1982 constitution incorporated the concept of affirmative action which aimed at protecting and supporting women, religious, linguistic, racial minorities...

Similarly the Indian constitution in article 15(3) (4) permitted “special provisions to be taken for women and children”

In some countries its development was hindered by state policies that looked up on affirmative action with disfavor. In England for instance “the attitude of the government which viewed with disfavor large scale entry in the labor market of married women particularly those with dependent children³⁷” denied most women important opportunities in the field of employment.

Internationally the concept came to be relevant in relation to group rights.³⁸ International instruments along with the recognition of minority rights started to provide for some special measures of protection (Affirmative action) to the same. For example, the 1957 ILO Convention concerning indigenous and tribal people called for special measures implying preferential treatment, provided that such measures are not contrary to the expressed wishes of the groups concerns. The 1958 ILO Convention adopted similar special measures to meet the particular requirement of persons who for reasons of age, sex, disability, family responsibility or social or cultural status are generally recognized as in need of special protection or assistance. UNESCO Convention against Discrimination in Education (1960), Convention on Racial Discrimination of 1965, Convention on the Elimination of All Forms of Discrimination against Women of 1979 also adopt positive attitude towards affirmative action. Thus international law also accepts policies of affirmative action³⁹.

³⁶As cited at note 2 above

³⁷McLean Sheila and Burrows Moreen, The Legal Relevance of Gender: Some Aspects of Sex Based Discrimination, (1988), P280-92

³⁸Natan Lerner, cited at note 31, above P.163-64

³⁹Ibid

2.3. Arguments For and Against Affirmative Action

2.3.1. Arguments for Affirmative Action

The following are some of the justifications forwarded for affirmative action:

A. Compensation. It is claimed that discrimination at some level in society is the principal cause of under representation for members of disadvantaged group⁴⁰. So, the compensation principle demands that benefits and resources should be provided to members of such a group as a compensation for the harms suffered by them in the past. This theory of compensatory justice is criticized on the ground that the idea of compensation is normally perceived in relation to individuals. I.e. it aims at the restoration of a person unjustly harmed at the expense of the person originally responsible for the harm.

The compensatory nature of affirmative action mainly focuses on reparation for past mistakes to certain groups of people such as minorities, females, peoples with disabilities, etc.⁴¹ Therefore, the remedial nature of affirmative action seems to denote the tortuous nature of liability where those benefited from past discrimination have to make good the damage sustained by the victim. On its face value, the remedial nature of affirmative action seems to be a back ward looking to rectify the past wrongs.

B. Satisfying Social Utility or argument for balance

It is claimed that affirmative action is a means of achieving balance between the different social groups in important positions in society⁴². This would in turn benefit not only members of a disadvantaged group but society as a whole; as members of a disadvantaged group would have more freedom of choice meaning, the equality of opportunity created by affirmative action will enable all persons to compete on the basis of equality and society at large would now be in a position to utilize the potentials and talents of members of a disadvantaged groups.

⁴⁰[https:// greengarageblog.Org/20.Principial pros and cons, of affirmative action](https://greengarageblog.Org/20.Principial%20pros%20and%20cons,%20of%20affirmative%20action), last visited on June, 2017

⁴¹Polyvius G. polyvius, *the Equal protection of the Laws*, (198), P.315-319

⁴²As cited at note-41 above

Other, greater harmony and mutual sympathy between the different groups will be achieved.

C. It assures equality in the work place.

When implemented inside the workplace, this policy will be the most effective way to ensure the candidates from ethnic groups are provided with the chance to prove themselves as having efficient capabilities as the candidates from other race⁴³. The same is true for women.

D. It breaks stereotypes regarding color and sex

Without affirmative action some stereotypes may never be broken. For many years, women and black people were considered less capable than males and whites respectively and it took the implementation of the policy to give these people the chance to show they are every bit as capable. This and other stereotypes have started to change and will continue to change with the help of this policy

2.3.2 Arguments against affirmative action

Some of the major arguments forwarded against affirmative action include;

- A. Classifications based on sex, race and the like result in stigmatization and self-doubt upon beneficiaries of affirmative action⁴⁴. So, the extension of preferences based on membership in a group will imprint on the minds of members of such group the belief that they cannot make it on their own. It also reinforces the situation by perpetuating distinction based on group membership. Proponents of affirmative action responded by saying, since affirmative action is not really about preferring the unqualified, this argument by critics rests on unwarranted assumptions.

⁴³Ibid

⁴⁴ Cited above at note 42

B. **Over inclusiveness** Affirmative action is claimed to award compensation to members of a disadvantaged group who do not deserve it. Proponents of affirmative action, on the other hand, argue that discrimination is a social wrong not just an individual wrong⁴⁵. Discriminatory practices, contribute to a system of thought that devalue members of a disadvantaged group to the extent of hindering their freedom of choice as to how to live their lives. So, even if a member of a disadvantaged group may not have been a subject of specific act of discrimination, he will inevitably be seriously affected by the deep-rooted belief and assumption which conditions not only the attitude of others towards him but also his own behavior.

C. **Reverse discrimination.** It is a reverse discrimination because the past discrimination against certain minority groups does not justify present discrimination against non-minorities and males. They further argue that all people are equal under the law and should be treated accordingly. Affirmative action is said to be unfair because it imposes compensation on innocent members of the group to the previously discriminated segments of the society⁴⁶. Therefore, it is ultimately unfair and unethical since it violates the basic principle of equality. They call for every person to be treated equally without any preferences.

D. It undermines self-esteem

- It is claimed that affirmative action can have a negative implication on the beneficiaries and it may foster the feeling in them that they cannot compete with other groups on equal terms⁴⁷. For instance, students or workers who are put in to a position through affirmative action often are not fully ready for the task. Because it lowers or undermines a sense of self-esteem; as a result they are not often qualified.

⁴⁵ Mclean Sheila and Burrows Moreen ,cited above at note 38

⁴⁶ www.mtholyoke.edu/~Jesan 2001/class web/pright,last visited on June 4,2017

⁴⁷ Ibid

CHAPTER THREE

Legal Analysis in Relation to Affirmative Action

Introduction

The concept of affirmative action have got due recognition under international human rights instruments. For instance, CEDAW, Protocol to the African Charter on Human and People's Right on the Rights of Women in Africa (PACHPRWA) are the major international legal instruments that adopted affirmative action in order to redress past mistakes and harms. In this chapter we will analyze those instrument including national laws of Ethiopia that are incorporated the principle of affirmative action.

3.1 International legal System

3.1.1. The Convention on the Elimination of All forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All forms of Discrimination against Women (here in after, the CEDAW) adopted by UN General Assembly Resolution of 18 December 1979 and entered into force in 1981. It is the first international legal document that helped to improve women's conditions and access to resources in order to change the basic structure if inequality in the relationship between men and women. It had introduced a wider approach to the advancement of women in the world. It is often described as an International Bill of Rights for women. The CEDAW consists of a preamble and 30 articles. It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. In its preamble, this convention sates that, its ratification was to affirm the rights recognized by the UDHR and other international instruments, which provides basic human rights. And this convention basically concerned with women and their fundamental rights. It provides the basis for

realizing equality between women and men through ensuring women's equal access to, and equal opportunities such as in education and employment. State parties agree to take all appropriate measures including legislation and temporary special measures so that women can enjoy all their human rights and fundamental freedoms.

The CEDAW now legally binds 165 states including Ethiopia, which have become states parties and obligates them to report within one year of ratification, and subsequently every four years, on the steps they have taken to remove obstacles they face in implementing the convention⁴⁸.

The convention, as per article 1, defines the phrase "Discrimination Against Women" as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality men and women of human rights and fundamental freedoms in the political, economic, social, culture, civil and any other field.

However, CEDAW does not clearly define the term "affirmative action" rather it provided the object and when it terminated, affirmative action for women is incorporated under article 4 of the convention which reads as follows.

- 1. 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 separate standards; these measures shall be discontinued when the objective of equality of opportunity and treatment have been achieved.*
- 2. Adoption by states parties of special measures including those measures containing in the present convention, aimed at protecting maternity shall not be considered discrimination.*

⁴⁸Medhanit Adamu and Sofanit Mekinen, Gender and the Law Teaching Material ,(2009),p 6-7

Under this provision, the researcher needs to clarify the aim of affirmative action and for how long it would be continued.

I. The Aim of Affirmative Action under the CEDAW

As we have discussed earlier, women in the past were discriminated from different activities in the society due to the deep-rooted stereotyped cultural practices. Now, by taking into consideration of that cultural practice, CEDAW granted affirmative action for women. So, the principal objective of affirmative action under the convention is accelerating de facto equality between men and women⁴⁹.

We can define de facto equality as the equality of men and women in practice. In order to say there is a de facto equality women shall participate equally with men in all spheres such as education, employment, politics, etc. When the equality of men and women is exercised in practice de facto equality will be achieved. At present, the equality of men and women is ensured in various legal documents. However, even still now, de facto equality between men and women has not been realized. So, in order to realize de facto equality between men and women CEDAW imposed an obligation on state parties to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudice and customary and all other practices which are based on the idea of the inferiority or the seniority of either of the sexes⁵⁰.

II. For how long should affirmative action continued?

⁴⁹ CEDAW, cited above at note 4, article 4(1)

⁵⁰ Ibid, article 5(a)

As the name indicates, affirmative action is meant to be a temporary measure as stipulated under article 4 (1) of CEDAW in so far as it states that *“these measure shall be discontinued when the objectives of equality of opportunity and treatment have been achieved”*. However, it seems to be difficult to provide a time frame within which such measures are to be stopped. This is a matter of empirical investigation in to the whole realities of life that cannot be reduced to a simple elimination of a single fact of inequality. Thus we can say that, so long as there is social inequality no doubt that affirmative action programs still continue to apply. In this regard, it is apparent that putting a deadline as to when to terminate affirmative action seems unrealistic. The viable solution is to set goals that are subject to periodic review and assessment of the measures taken. Affirmative action is aimed at solving countries old social problem. Therefore, it is not a one time or short term action rather it is an ongoing action until the accomplishment of its goal of achieving de facto equality.

3.2 Regional Legal System

3.2.1 Protocol to the African Charter on Human and Peoples Right on the Rights of Women in Africa (PACHPRRWA)

The protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, known as The African Women’s Protocol, was adopted by African Heads of state and governments on July 11 2003 at the Maputo, summit of the African Union, held in Mozambique and entered in to force on 25 November 2005. 36 countries within the AU member states are signed this protocol. Ethiopia signed this protocol on June in 2004. However, the House of people’s Representatives does not approve and ratify this protocol yet⁵¹. This protocol has 32 articles, covering social, cultural, economic, legal and political issues. It commits countries that sign and ratify it to adopt all measures necessary for women to be able to enjoy their human rights. In its preamble, this protocol call all state parties to eliminate every discrimination on the grounds of

⁵¹www.achpr.org/instruments/women-protocol/ratification last visited on October 11 2017

race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, birth or other status. And the protocol to the ACHPRRWA also reaffirms women's rights that have been recognized and guaranteed in all international human rights instruments, notably the UDHR, and ICCPR, The ICSECR, the CEDAW, the ACRWC, and all other international and regional conventions and covenants related to the rights of women.

Adopting a distinctly transformative stance, the protocol emphasizes corrective and specific positive (or affirmative) action. While CEDAW contains generic provision allowing for temporary special measures aimed at accelerating de facto equality between men and women.⁵² The protocol reiterates the need for Positive measures by locating them in different contexts⁵³.

Article 9 (1) of the protocol requires states to adopt measures that may favor women above men' such as electoral quotas for women in order to ensure substantive (in fact) equality.

Article 9 (1) of the protocol reads as:

States parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action enabling national legislation and other measures to ensure that;

- a. Women participate without any discrimination in all election
- b. Women are represented equally at all level with men in all electoral processes
- c. Women are equal patterns with men at all levels of development and implementation of state policies and development programs.

The aim of this provision is achieving substantive equality between men and women in different sectors. Substantive equality means achieving equitable outcomes as well as equal opportunity, and the need to sometimes treat people

⁵² CEDAW ,cited above at note 4,article 4(1)

⁵³ PACHPRRWA, articles 2(1)d,9(2)and 12(2)

differently to achieve equal results. It takes in to account the effects of past discrimination, and recognizes that rights, entitlements opportunities and access are not equally distributed throughout society. Substantive equality is achieved by addressing and preventing systematic discrimination by adjusting policies, procedures and practices to meet the specific needs of women in the community.

Article 2 (1) (d) also expressly recognized affirmative action for women which read as follows:

States parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regards they shall:

- d. Take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist. So this provision specifically required the member states of the protocol to take positive action with regard to discrimination in law.

The other provision which recognize affirmative action is article 12 (2) of the protocol which reads as:

states parties shall take specific positive action to promote literacy among women, promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology, promote the enrolment and retention of girls in schools and other training institutions and the organization of programs for women who leave school permanently.

3.3 National Legal Systems

3.3.1. The PDRE Constitution

The PDRE constitution was the first legal instrument that recognized gender based affirmative action in Ethiopia. Article 36 (2) of the same constitution reads:

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.

The coverage of affirmative action was limited to the public sector. The government itself took up the obligation of providing women with special support. The kind of special support is not clear from the constitution while the areas of implementation were indicated.

3.3.2. The FDRE constitution

As provided in Article 9 the constitution is the supreme law of the country. Any law, customary practice or decision of an organ of state or a public official, which contravenes this constitution, shall be of no effect. All international agreements and ratified by Ethiopia are integral part of the law of the land in accordance with article 9 (4) of the constitution. For instance, Ethiopia ratified CEDAW in 1981 and become the party to the convention. Here indirectly the constitution entitles affirmative measures for women through international conventions ratified by Ethiopia. Therefore, the 1995 FDRE constitution is the other legal instrument that recognized gender based affirmative action in its article 35 (3) under this provision affirmative action is being implemented mainly in the fields of education and employment.

Article 35 sub article (3) of the FDRE constitution provides:

“The historical legacy of inequality and discrimination suffered by women in Ethiopia taken in to 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 compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.”

The inclusion of the strategy of affirmative action in the constitution is too important by itself. The provision makes affirmative action a right of women, and

that avoids a number of controversies that accompany affirmative action in other states. The usual argument that equal protection of laws does not include taking affirmative action, shall not arise in Ethiopia, because it is specifically provided in the FDRE constitution.

In addition, the provision makes clear that affirmative action is to remedy the historical legacy of sex discrimination by providing special support for women; Affirmative action therefore, will no more exist once this historical legacy is abolished. It is a temporary measure. The purpose of affirmative action provided in the constitution is not to support women for the whole of their lives. It is just to enable them compete and participate equally with men in important institution of the state.

Affirmative action Vs. Human rights in the FDRE constitution

Is affirmative action as defined in chapter two a right, women's right? Can it possibly be conceived as a human right and particular as a human right of women?

Human rights are defined as rights which one has simply because one is a human being. This definition tells us the sources of the rights, which is human nature. But it doesn't tell us the contents the rights themselves. The enumeration of the contents of the rights is done in the various human rights instrument.

The most pertinent piece of human rights instrument to the discussion of affirmative action Vis- a- vis human rights of women is the 1979 Convention on the Elimination of all forms of Discrimination Against Women, usually referred to as women's convention. Women's Convention consists of a list of human rights of women. It has a two- tier structure regarding affirmative action. Art 4 and 3 of the same convention read respectively; adoption by state 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 separate standards; these measures shall be discontinued after the objectives of equality of opportunity and treatment have been achieved.

Art. 3 state parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation to ensure the full development and advancement of women, for the purpose of guaranteeing them, the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.

Art. 4 by explicitly permitting temporary special measures to be taken in favor of women legitimize affirmative action measures. The purpose of these measures is to accelerate de facto equality between men and women for de jure equality has now for long been recognized in almost all legal instruments (national and international). Art. 3 of the convention, imposes the duty to adopt affirmative measures in favor of women on state parties. In other words, it imposed an obligation on state parties to implement affirmative measures in all fields and most importantly in some particularized fields. This will necessarily entail a corresponding right or entitlement on the part of women to claim implementation of affirmative measures in their favor. Thus, based on Article 3 Cum 4 of women's convention we can say that right to affirmative measures is one of the human rights of women. So affirmative action as incorporated under art. 4 Cum 3 of women's convention can be taken as a human right of women.

When we come to the FDRE constitution it is evident from article 35 (3) that it is framed in the "right to" trend. The fact that affirmative measures is presented as entitlement to women automatically makes it deemed as women's rights. In studying the structure or arrangement of the FDRE constitution, chapter 3 of the constitution is dedicated to fundamental rights and freedoms, which are further classified into human rights and democratic rights. Each and every rights mentioned in arts. 14-44 are rights that are incorporated in the various human rights instruments as human right. Art 35 (3) of the FDRE constitution, the article that explicitly mandated the taking of affirmative action to women, falls

within the human rights section of the constitution. Consequently, so long as the rights embodied under the human rights section of the constitution are human rights, so also affirmative action granted to women is a human right of women.

However, art 35 (3) which granted gender based affirmative action is found under the section of democratic rights: would this grouping under democratic rights as opposed to human rights group? It wouldn't for three reasons:

Firstly, though human rights are classified and reclassified into different categories, they end up being indivisible. Thus, the classification is done only for technical reasons. The same rational holds for the constitutional classification of fundamental rights and freedoms in to human rights and democratic rights.

Secondly, according to the Dictionary of Human Rights Law, there are five categories of human rights⁵⁴ civil and political, economic, social and cultural ... rights. The same Dictionary in enumerating categories of civil and political rights, covers the rights covered under the democratic rights section, part two of our constitution so the democratic rights of our constitution are nothing but one category of human rights. Thus, the fact that art. 35 (3) is found under part two (democratic rights) rather than under part one (human rights) doesn't diminish the status of affirmative action as a human right of women.

Finally, article 13 (2) of the constitution states that fundamental rights and freedoms contained in chapter three are to be interpreted in accordance with international human rights conventions adopted by Ethiopia. One such human rights instrument is the CEDAW (which Ethiopia adopted in 1981). Hence, we can argue that according to this convention gender based affirmative action is a human right of women. In interpreting art. 35 (3), it is to be done in such a way that the interpretation confirms to the governing human rights convention i.e. women's convention. Accordingly, affirmative action as embodied in art 35 (3) of the FDRE constitution is a human right of women.

⁵⁴ John S.Gibson ,Dictionary of International Human Rights Law ,(1996),p. 36

3.3.3 Federal Civil Servants Proclamation N0515/2007

The federal civil servant proclamation was enacted by the House of People's Representatives in 2006. It is a federal law and thus it is applicable on those civil servants employed by the federal government. It does not applicable on civil servants employed by the regional governments. Regional states have their own civil servants proclamation in their own respective territories.

“Civil Servant” is defined under article 2 (1) of the proclamation as a person employed permanently by federal government institution. This proclamation adopted the principle of equality in the application of job vacancies under article 3 (1). There shall be no discrimination among job seekers or civil servants in filling vacancies because of their ethnic origin, sex, religion, political outlook, disability, HIV/AIDS or any other ground. So according to this provision everyone is equal before the law during filling of vacancies. Further sub- article two provides “a vacant position shall be filled only by a person whom meets the qualification required for the position and scores higher than other candidates.

Even though the federal civil servants proclamation adopts the principle of equality in job vacancies, it is granted affirmative measures for female candidates and other minority groups in exceptional circumstances.

Article 13 (3) of the FCSP expressly provides:

“Notwithstanding the provisions of sub articles (1) and (2) of this article,

In recruitment, promotion and deployment preference shall be given to

A. female candidate:

B. candidates with disabilities; and

C. Members of nationalities comparatively less represented in the government office, having equal or close scores to that other candidate.

So, according to this provision female candidates have the right to affirmative measures during recruitment, promotion and deployment. This is one

expression of implanting the constitutional rights of women in receiving affirmative measures.

3.3.4. The Amhara National Regional State Civil Servant's Revised Proclamation No/71/2010

As per article 52 (2) (1) of the FDRE constitution the Amhara national regional state enacted its own civil servants proclamation. it provides that ⁵⁵

During filling of vacancies, preferences shall be given to female candidates having equal or close scores to that of other candidates. So, the proclamation adopted affirmative action for women.

3.3.5 Amhara Regional State Civil Servant Selection Directive

Article 2 sub-articles 2.7.3 provides that during recruitment to be woman civil servants are entitled 3 additional points before sitting in exam. Preferences shall give for women candidates when they get equal or close results with men⁵⁶

3.3.6 Affirmative Measures Directive in Civil Service System

This directive defines affirmative measures as a measure which is taken for women during recruitment, transfer and promotion to narrow gender imbalance in civil service system⁵⁷.

This directive recognized various areas of affirmative action schemes for women under art.2 (1) which reads as follows:

A. pre- work training

Before recommitment by conducting candidate's selection civil servant offices shall give pre-work training for women. For instance candidates for primary school teaching, nursing, layering 20% quota shall be reserved to women candidates to compete only among themselves and the remaining 80% to

⁵⁵Amhara National Regional State Civil Servants Revised Proclamation No.171/2010,article 15(3)

⁵⁶Amhara National Regional State Civil Servants Selection Directive enacted by the State Civil service Bureau ,article 2(2)

⁵⁷Affarmative Measures Directive in Civil Service System ,article 2(a)

compete with men candidate and preferences shall be given to female candidates having equal scores with men.

B. Training in work

Women capacity building by education and training shall be given special attention, especially during short, medium and long term trainings. Accordingly, 10 points are entitled to women candidates in short term training when they compete with men and if they get equal results preference shall be given to women. Likewise in long term training 5 points are added to women candidates and preferences shall be given to them when they get equal scores with men candidates.

C. Recruitment

During recruitment for positions that required diploma and below it, 20% quota shall be reserved to women candidates to compete only among themselves out the remaining 80% to compete with men candidates. In such a case 3 points are entitled to women when they compete with men and priorities shall be given to them having equal scores with men.

And also during recruitment for positions that required above diploma level, 25% quota shall reserve for women candidates to compete among themselves and 75% to compete with men candidates. And they shall be entitled 3 points having equal scores when they compete with men candidates for positions which require both below and above diploma level.

D. Transfer

During transfer women candidates shall be granted three points and preferences shall be given to them having equal results with men candidates.

E. Promotion

When men and women are competing for promotion 5 points shall be given for women candidates for the position of process owner. Therefore, women have the right to invoke such rights when they denied.

Legal gaps

In Ethiopia the general principle of affirmative action is adopted under article 35(3) of the constitution of the Federal Democratic Republic of Ethiopia. But the constitution is failed for the detail of affirmative measures. There is no specific or single legislation which governs the issue of affirmative action compressively. The provisions which govern affirmative action are, however, found scattered throughout different substantive enactments. The detail of the rules relating to affirmative action is more or less provided under the guideline of Amhara National Regional state. However, this guideline has not proclaimed by the state NegaritGazzeta and hence it is not accessible to every citizen including women. As a result, implementations of affirmative measures are difficult. It is not easy to implement in a proper and effective manner.

CHAPTER FOUR

Implementation of Affirmative Action Schemes for Women Civil Servants Working In DebreBerhan Town

Introduction

DebreBerhan is a city in central part of Ethiopia and located in the Semen Shewa Zone of the Amhara Regional state about 130 Km's north east of Addis Ababa on the paved high way to Dessie. The Town has a latitude and longitude of 9°41'N 39° 32'E/9° 68'N 39° 55'E and an elevation of 2,840 meters⁵⁸. Debre Berhan was an early capital of Ethiopia and after wards with Ankober and Angolella was one of the capitals of the Kingdom of Shewa. Today, it is the administration center of the Semen Shewa Zone of Amhara region. Emperor Zarayacob in 7 marches 1456 founded the Town⁵⁹.

Debre Berhan city was one of the coolest cities, which are found at the sub-tropical zone of Ethiopia. The average annual temperature of the city during day and night hour is 17.8° and 8.83° c respectively with perception 66.17MM⁶⁰.

In Debre Berhan town there are about twenty (20) civil service offices. It ranges from Keble up to Mayor Offices. These all offices are the researcher's area of study.

According to the Debre Berhan town administration civil service office report of 2009 E.C the total civil servants of the town is about 1706 and 764 are women's. This means from the whole civil servant of the town 44.8% are women.

⁵⁸<https://en.m.wikipedia.org/wiki/DebreBerhan>, last visited on December 21/2017

⁵⁹ ibid

⁶⁰ Climate, Debre Berhan <http://www.metoblue.com/en/weather/forecast/mode climate/debre birhan-ethiopia-339734>

The researcher's area of focus in this study is government sector offices located in Debre Berhan Town. Therefore, by taking a selected sample from the total population employed with in the described civil service offices and prepared questioner to 62 sample population and analyzing the constitutional right of women's entitlement to affirmative action with the practice implemented in the stated civil service offices.

Educational background of the sampled population

Certificate.....	10(16.1%)
Diploma Holders.....	20(32.2%)
Degree Holders.....	32(51.6%)

Additionally, the subjects of the distributed questionnaires' are females because no one can better knows about the issue of affirmative action than females. Know, by considering the data gathered from the selected sample population of women civil servants we proceed to present the response for the provided questioner.

4.1. Awareness

Awareness means the knowledge of peoples with respect to a certain things or facts. It is important to perform or exercise certain rights and benefits. Women's full awareness with respect to affirmative action is a crucial factor for the proper application of those measures.

The findings of the researcher shows that the majority, i.e. 38(61%) of the respondents have clear awareness about the term affirmative action. They replied that affirmative action is a policy which is granted to women's to compensate past inequalities suffered by women in political, social, economic and other spheres of life. And from the respondents 24% (15) are provided that

affirmative measures which are granted by the Ethiopian government an incentive for women's. Finally, the rest 15 % (9) of the respondents replied that affirmative action is a special privilege which is added a **three** point mark during recruitment. From this the researcher finds that significant number of women civil servants have a better understanding about affirmative action from the sample population. However, this does not mean that all women civil servant have a better understanding in the civil service because they neglected other areas of implementation other than recruitment.

When we see the findings of the researcher the majority of the women civil servants, i.e. **Thirty-nine** (63%) replied affirmative action as their rights. The other **eighteen** (29%) of the respondents believed affirmative action is granted to them as an aid. The rest **five** (8%) replied that they believe affirmative is a donation granted to them.

the findings of this study indicates that there are women employees whose perception in relation to affirmative action is either help or support or gift extended to them by the government. This is an indication of the disparity that exists between social perception and the law with regard to the status of affirmative action. While affirmative action within the context of the law is taken as one of human rights of women, there perception portrays it as either humanitarian support or gift extended to them by the government. Such misconception by women themselves affects its implementation. Further, with such a perception persons responsible for its implementation would not feel obliged to implement it in a uniform or consistent manner. It would be taken as something they will enforce only when they feel like extending support or help to women. This in turn means that affirmative action beneficiaries would not be in a position to make a claim for affirmative measures. As a result the purpose of the constitutional provision article 35/3/ may not be attained. Similarly, the international obligation of the country wouldn't be met⁶¹.

⁶¹ CEDAW cited above at note 4 article 3 cum 4

Therefore, even if 63% of women civil servants know affirmative action as a right of them it is impossible for the researcher to conclude the constitutionally granted rights of affirmative measures is fully known by the respondents. This may be taken as one of the reasons for the less applicability of affirmative measures for women civil servants working in Debre Berhan service sector offices.

4.2. Attitudes towards affirmative action scheme

The importance of affirmative action is provided under article 4(1) of the CEDAW, articles 9(1) and 12(2) of the PACHPRWA as well as under article 35(3) of the FDRE constitution.

Article 4(1) of the CEDAW stipulates:

---- Temporary special measures are aimed at accelerating de facto equality between men and women.

Article 9(1) of the PACHPRWA states that:

States parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:

- a. Women are represented equally at all levels with men in all elections
- b. Women are represented equally at all levels with men in all electoral processes
- c. Women are equal patterns with men at all levels of development and implementation of state policies and development programs.

Furthermore, article 12(2) of the protocol provides as:

State parties shall take specific positive action to promote literacy among women, promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology, promote the enrolment and retention of girls in schools and other training institutions and the organization of programs for women who leave school permanently.

The FDRE constitution, which is the supreme law of the country, also provided the importance of affirmative action as.⁶²

Women are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them with compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.

Taking the above laws in mind, we proceed to the respondents answer as to the importance of affirmative action.

The response of women civil servants indicates that all (100%) of the sampled population replied that affirmative action for women is very important because even today there is somehow gender stereotype cultural activities which discriminates women in different spheres including employment. So, these and other discriminatory practices would be broken through affirmative action measures for women's including women civil servants.

However, among the sampled population **thirty seven** (60%) of the respondents do not believe the current affirmative action practices in Debre Berhan sectors service offices accelerate substantial equality between men and women. Their reason is that women are still carrying much responsibilities or high burden in home, like preparing food, taking care of children is alone done by them. So, due to this reason they provide that the current affirmative action implementing is not adequate when we compare their influences in the home. The rest **Twenty**

⁶² The Constitution of the Federal Democratic Republic of Ethiopia, 1995, proclamation No.1, Federal Neg. Gaz. year 1 no article 35(3)

(40%) agreed that the current affirmative measures granted to them would accelerate the equality of women with men.

4.3. The implementation of affirmative action scheme in sector offices

Affirmative actions as a right for women have got a due recognition under the CEDAW, PACHPRWA as well as under the constitution of the federal Democratic republic of Ethiopia. The FDRE constitution do not specify as to what areas affirmative action is to be implemented. The constitution failed in which areas and how it is to be implemented for women. In this regard the federal civil servants proclamation⁶³ has a step forward by providing affirmative action in favor of women in the employment sector. Accordingly, a priority is given to female candidates in employment with the same qualification as men.

Article 15 (3) of the Amhara National Regional State Civil Servants Revised proclamation also provides that: in filling of vacancies other than pre-requisites, preferences shall be given to female candidates having equal or closes that of other candidates.

Moreover, the Amhara regional state affirmative measures guideline or directive in civil service system⁶⁴ states what specific measures or benefits should be given for women both before and after employment.

According to the Guideline fulfilling the minimum requirements, preferences should be given to women when they have equal results with men during recruitment transfer, promotion and for short and long term in service trainings. But, what the researcher founds in conducting this paper in Debre Berhan Town civil service sectors, the practice on the ground is deviant from the stipulation of the law. Since, as per the statement of the law, affirmative action should be granted to women. However, the response of women civil servants indicates that

⁶³ Federal Civil Servants Proclamation No.515/2007, article 13(3)

⁶⁴ Cited above at note 58

among the sampled population, 43(69%) of them replied that there is no affirmative measures granted in their sector, while the rest 19(31%) replied that there is affirmative action in their sector and benefited from such right. For instance, during recruitment, promotion they entitled affirmative action measures. Based on the respondents response educational opportunities 9(14.5%), promotion 5(8%) and two (3.2%) in transfer are areas of affirmative action schemes implemented.

Among the respondents **four** (6.4%) of them replied that both educational opportunities and promotion are areas of affirmative action schemes implementing in their particular civil service sector. And **forty** (22.5%) of them provided that all area of affirmative action schemes are being implemented and benefited from such measures. However, the remaining **Twenty eight** (45.1%) of the respondents of women civil servants in Debre Berhan Town replied that they did not know as to which affirmative action schemes are implementing because there is no affirmative action schemes performed in their civil service sector.

Therefore, what the practice shows based on the researcher finding the majority of women civil servants is denied their constitutional rights to entitle affirmative action measures. Only 31% of women civil servants are benefited affirmative action in their civil service sector and the researcher finds its practical implementation of women's affirmative measures under the civil service sector of the selected town, it becomes found that 45% of the total sampled population responses none of affirmative action schemes are implemented.

4.4. Practical challenges in implementing affirmative action

Under this section the researcher wants to examine the practical challenges of affirmative measures for women civil servants working in Debre Berhan Town.

Accordingly, from the sampled population, **thirty-three** (53%) of the respondents have the opinion that affirmative action programs are being poorly implemented there reasons is that there is a wide spread mal practices by the

concerned individuals/ officials. There is a discriminatory practices even between women because women's who have close relative or a friend in that office is given high priority than other females who do not have such relatives or friends. Some officials received bribe from women civil servants and makes affirmative action their business.

In this regard W/ro Etalemahu Yimtatu stated that⁶⁵:

"The implementations of affirmative action for women are good and increased from time to time. However, it does not mean that it reached to the required level because there is still the problem of implementation in different civil service sectors of the town as there are corrupt officials."

W/ro. Etalemahu further informed us women and children, youth worker and social affairs offices is the main observer or supervisor of women's affairs including the issues of affirmative action. Accordingly, the office examines the concerned bodies twice in a year.

The remaining **Twenty-nine** (47%) of the respondents replied that affirmative action in Debre Berhan civil service sectors are being properly implemented. So, what the researcher founds that affirmative action program implementation has been below the required level.

4.5. Factors for such challenges

According to the respondents the major practical factors or causes for the less implementation of affirmative action in Debre Berhan town civil sector offices are the following:

⁶⁵ Interview with W/ro Etalemahu Yimitatu, Debre Berhan Town Administration Women and Children, Youth, Workers and Social Affairs, conducted on Nov.16 2017

4.5.1. Bias /Discrimination

Article 25 of the FDRE constitution declared the equality of all persons. It provides that:

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

Therefore, the constitution prohibits discrimination among peoples and entitled every one as equal irrespective of any discrimination. But in conducting our research we found different from the law.

Women civil servants in Debre Berhan Town informed us there is a challenge when officials or concerned authorities while exercising affirmative action.

Among the sampled population **twenty three (37%)** of women employees replied that

There is a discriminatory practice between females by officials due to race, friendship, etc. The concerned authorities do not give much attention for women affirmative action measures rather they are careless in doing this. Due to this reason they grant affirmative action as they wish and thus made discrimination among women civil servants.

In this regard w/ro yirgalem misganaw stated that:⁶⁶

“Affirmative action is one of the policy measures taken by the Ethiopian government to redress the historical discrimination of women in the country. Although Ethiopia has made a significant progress towards creating an enabling legal and policy environment, implementations of laws and policies have remained a major challenge.”

She further states that there are some concerned or responsible officials who favors to women differently and made bias against one from another.

⁶⁶ Interview with W/roYirgalem Misiganewu, Debre Birhan Town Administration Civil Service and Human Resource office officer ,Conducted on Nov.13,2017

Therefore, we can conclude that bias or discrimination among women civil servants in Debre Birhan civil office is one of the problems for the poor implementation of affirmative measures.

4.5.2. Negative attitudes towards affirmative action

As different studies show men and even some women are opposed and against affirmative action entitlement. Their views are negative towards affirmative action schemes. However, in conducting our research we found different from this. That means women does not oppose affirmative action measures rather they all supported it. As to our findings is concerned, only males have opposed or against the action taken through affirmative action for women by the government.

It is obvious that the proper or effective implementation of affirmative action requires the commitment of all stake holders including male. Without the effective involvement of male affirmative action may not be effectively implemented. But there are some male officers and civil servants who do not accept affirmative action which is a constitutionally granted right according to the statements of the respondents.

From the sampled population **eleven** (18%) of respondent replied that the attitude of men with regard to affirmative action is negative. They informed us males do not have willingness for the continuation of affirmative action. They are against affirmative measures provided for women civil servants.

4.5.3. Corruption

Corruption is a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit. It is a major cause for the less implementation of laws in general and laws related to affirmative measures in particular. Even if it is prohibited and punishable under the law, still it has not been avoided or eliminated in Ethiopia in general and in civil service offices of Debre Behan town in particular.

When we see the responses of women civil servants in the town **twenty-eight** (45%) of them replied that corruption is one of the problems observed during implementation of affirmative action schemes.

As described from the respondent the implementation of affirmative action is affected by corruption. For instance, during recruitment, promotion and transfer close relatives or by paying money one woman may be granted special preference than others who do not have a relative or money. The respondent provided that the concerned authorities often works not in line with the laws, rules, and directives rather they opted the laws and regulations and works their own benefit.

Therefore, according to the finding the researcher observes that implementation of laws and policies towards affirmative action have remained a major challenge in Debre Berhan civil service sectors. Even if the progress is somehow good but there is much still to be done. So, the concerned institution should actively control or supervise for the better implementation of laws and policies towards affirmative measures.

4.6 Women's Level of Satisfaction on affirmative measures

Level of satisfaction	No	%
Minimal	30	48%
Medium	26	42%
Satisfactory	6	10%

Table1: the level of satisfaction in relation to affirmative action.

The results above show that the majority of the respondents (48%) are of the opinion that the satisfaction of affirmative action, which is granted to them, is minimal while 42% of them replied that it is medium the rest 10% of the respondent replied that fully satisfactory.

From this the researcher founds that the overall implementation of affirmative action schemes has been unsatisfactory or below satisfactory level.

CHAPTER FIVE:

Conclusion and Recommendations

5.1. Conclusion

Equal rights of women and men are a basic principle of law embodied in numerous international human right instruments. Despite this basic principle of non-discrimination, additional means for promoting and protecting equal enjoyment of human rights by women is necessary through affirmative action. Affirmative action generally refers to programs aimed at ensuring equitable distribution of resources and benefits to disadvantaged members of a society such as women. It is an essential means enables women to compete with men in different areas such as, employment, education, politics, etc. The major objectives of affirmative action is eliminating existing and continuing discrimination, to remedy negative effects of past discrimination and to create substantial equality between men and women. But, enabling women to affirmative measures needs the reconciliation of the two conflicting interest, i.e. the principle of non-discrimination and affirmative action. In order to achieve equality or equity the principle of non-decimation must be complimented by another equally important principle so called “affirmative action”. Unless and until these two principles are reinforced each other, past misdeeds and previous

marginalization may not be rectified and there by true equality will not be attained.

Basically, the principle of affirmative action have got due recognition both in the FDRE constitution, federal civil servants proclamation and other international human right instruments. Here, there is a positive obligation expected from the government towards the right of women to be entitled affirmative measures. Since there is still a necessity to take measures to remove the social, cultural and traditional patterns which perpetuate gender- role stereotypes and to create an overall framework in society that promotes the equal rights and responsibilities between men and women. It is clearly known that Ethiopia is a state party to CEDAW which allowed affirmative action to women.

The study assessed the practical implementation of affirmative action schemes of women civil servants in different civil service offices of DebreBerhan Town. The study examined the implementation of affirmative action schemes for women civil servants through the means of dissemination of questionnaires, interview. However, the practical implementation of affirmative action which is a constitutionally guaranteed right to women civil servants is below satisfactory level as to the finding of this study.

As to the knowledge of women civil servants towards affirmative action is concerned, they have more or less good knowledge but they do not have the full knowledge about the areas of implementation of affirmative action. Instead, they know or believe entitlement of three points during recruitment as the sole areas of implementation as to them.

As to the importance of affirmative action is concerned there is no reservation among women employees or they all accepted for social, economic as well as political participation of them.

With regard to areas of implementation, recruitment is a major area while other areas like, promotion, transfer are not properly implemented.

The study found that there are some practical challenges in relation to implementation of affirmative action, namely, discrimination/ bias, corruption as well as the negative attitudes of men's towards it. Accordingly, the current implementation is incompatible with the law. The study also found that the existing laws policies of Ethiopia regulation affirmative are not adequate and they are found scattered.

Finally, as to the level of satisfaction is concerned, it is unsatisfactory or below satisfactory level.

In general, as the finding shows under this study, the practical implementation of affirmative action schemes (human rights of women) are not compatible with the existing legal frameworks of Ethiopia, and the international human right instrument which allows temporary special measures for women.

5.2 Recommendations

Based on the major finding and conclusion drawn, the following recommendations are suggested by the researcher.

- The FDRE constitution fails to adopt the different forms of affirmative action. Due to this the various forms of affirmative action were denied as the study founds. Even if some laws attempts to adopt the forms of affirmative measures, they are not clear enough and the rules regulating the principle of affirmative action are found scattered. Here, the legislature should enact a comprehensive and single document to promote the effective application of affirmative measures.
- To alleviate the in adequacy of the FDRE constitution as to affirmative action, the constitution should be amended, as per article 104 and 105 of it, in a manner that expressly embodied affirmative action as a human right of women.
- To solve the insufficiency of domestic legislations as to the right to affirmative action, the HPR, Pursuant to article 55 (1) of the FDRE constitution, should

enact specific legislation on the right to affirmative measures, which among others;

- Address the areas of implementation of affirmative action
 - Specify the obligation of governmental authorities towards ensuring the right to affirmative measures of women.
 - Enable women whose right to affirmative action is violated or denied to access judicial or legal remedy.
 - Impose criminal liability on law executing officers who failed to grant affirmative measures to women.
- To solve the problem of men's negative attitude towards the existence of affirmative action, the government, NGOS and any concerned body should work promoting continuous awareness rising on the importance of affirmative action.
 - Finally, the DebreBerhan town administration women, children and youth social affairs office should work in collaboration with DebreBerhan University, particularly with genders staff and with college of law to bring the advancement of women through affirmative measures.

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Interviews

1. Interview with W/roYirgalemMisganaw, DebreBerhan town Administration Civil Service and Human Resource Office officer, conducted on Nov. 13/2017
2. Interview with W/roEtalemahuYimtatu, DebreBerhan town Administration, Women and Children, Youth, Workers and Social Affairs Officer, Conducted on Nov. 16/2017

Annexs

የጥናትና ምርምር መጠየቅ

ይህ መጠየቅ የተዘጋጀው በደብረብርሃን ከተማ አስተዳደር ውስጥ በሚገኙ የሲቪል ሰርቪስ መስሪያ ቤቶች በኢትዮጵያ ህጋዊና የፖሊሲ ማዕቀፍውስጥ ስለ ሴቶች ተጨማሪ የድጋፍ እርምጃ እንቅስቃሴዎች አተገባበር ዙሪያ ጥናት ለማድረግ የተዘጋጀ መጠየቅ መሆኑን አውቃችሁ መጠየቁን ለትምህርታዊ ጥናትና ምርምር ብቻ እንደሚያገለግል ተረድታችሁ በአግባቡና አስተማሪ በሆነ መንገድ ሞልታችሁ እንድትመልሱልን እንጠይቃለን።

✓ ስም መፃፍ/አይጠበቅብዎትም

- ✓ መልስ በሚሰጡበት ወቅት ለ 8 ኛው፣ 11 ኛው እና ለ 16 ኛው ጥያቄ በተሠጠው ክፍት ቦታ ውስጥ የ X ምልክት ያስቀምጡ
- ✓ ማብራሪያ ለሚያስፈልጋቸው ጥያቄዎች ደግሞ በተሰጠው ቦታ ሃሳብዎን ይግለጹልን።

የህንሰ አለመዝና

ይበልጣል ደስታ

የደብረብርሃን ዩኒቨርሲቲ የህግ ኮሌጅ አምስተኛ አመት ተመራቂ ተማሪዎች

ጥቅምት 2010 ዓ.ም

ደብረብርሃን

የመግቢያ ጥያቄ

1. የስራ ኃላፊነት-----

2. የትምህርት ደረጃ-----

ዋና ጥያቄ

1. የሴቶች ተጨማሪ የድጋፍ እርምጃን (affirmative action) የሚለውን ሀረግ እንዴት ይረዱታል?

ቢያብራሩል

ን-----

2. የሴቶች ልዩ ድጋፍ ይጠቅማል ብለው ያስባሉ? ?

ቢያብራሩል

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3. ባለቤት መስሪያ ቤት ውስጥ የሴቶች ልዩ ድጋፍ አለ የለም?-----ካለ ምን ምን አይነት ድጋፎች ይደረጋሉ?

ቢያብራሩል

ን-----

4. ድጋፉ በሴቶች ተሳትፎ ላይ ያመጣው ለውጥ ምንድን ነው ብለው ያስባሉ? ማህበራዊ ለውጥ ነው፣ኢኮኖሚያዊ ለውጥ ወይስ ፖለቲካዊ

ቢያብራሩል

ን-----

5. ከሚከተሉት ውስጥ ባሉበት መስሪያ ቤት ውስጥ የሚተገበሩት ልዩ ድጋፎች የትኞቹ ናቸው ?

ሀ. በትምህርት ዕድል ለ. በዝውውር ሐ. በስራ ዕድገት መ. ሁሉም

ሠ. ሌላ ካለ-----

6. በሴቶች ልዩ ድጋፍ እድል እየተጠቀሙ ነው? -----ከተደረገልዎት የምን

ድጋ

ፍ?-----

7. እርስዎ ወደ መስሪያ ቤቱ ሲመጡ (ሲቀጠሩ) ድጋፍ ተደርጎለዎታል ወይ?-----ከተደረገልዎት የምን የምን ድጋፍ

?-----

8. ተጨማሪ የድጋፍ ርምጃ (affirmative action) ለእርስዎ ምንድን ነው?

ስጦታ

እርዳታ/እገዛ

መብት

ሌላ ካለ

9. አሁን የሚሰጠው የሴቶች ተጨማሪ ድጋፍ ርምጃ ሴቶችን ከወንዶች እኩል ያደርጋቸዋል ብለው ያስባሉ?

ቢያብራሩል

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10. በስራ ቅጥር ሴቶች ከወንዶች እኩል ዕድል ያገኛሉ ብለው ያምናሉ? ምክንያቱን ቢያብራሩልን/ቢገልፁልን

11. ለሴቶች የሚሰጠውን ልዩ ድጋፍ ያስፈልጋል ብለው ያስባሉ?

አዎ ☐

አያስፈልገም ☐

12. በአሉበት መስሪያ ቤት ውስጥ ለሴቶች የሚሰጠው ተጨማሪ የድጋፍ እርምጃ በትክክል ይፈጸማል ብለው ያስባሉ?-----ካልተፈፀመ

ምክንያቱን

ቢገልፁል

ን-----

13. በአሁኑ ሰዓት በደብረብርሃን ከተማ አስተዳደር ሲቪል ሰርቪስ እየተፈጸመ ላለው የሴቶች ተጨማሪ የድጋፍ እርምጃ በቂ ነው ወይስ በቂ አይደለም ብለው ያስባሉ ?

ቢያብራሩል

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14. በተጨማሪ ድጋፍ እርምጃ አፈጻጸም ወቅት ተግባራዊ ተጨባጭ ፈተናዎች ወይም ችግሮች ምን ምን ናቸው ብለው ያስባሉ?

ቢያብራሩ

ት-----

15. አሁን እየተፈጸመ ያለውን ተጨማሪ የድጋፍ እርምጃን እንዴት ይገመግሙታል?

አነስተኛ ☐

መካከለኛ ☐

ኃጋቢ ☐

16. ተጨማሪ መግለጽ የሚፈልጉት ሐሳብ ካለ ?-----
