

# Gender Affirmative Action: Reflections on Fair Equality of Opportunity Regarding Female Student Quotas in Public Higher Education Institutions in Lusaka

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## **Abstract**

*Affirmative action policies have been lauded for contributing to equality and, at the same time, criticized for perpetuating reverse discrimination. In Zambia, women's empowerment and the steps that need to be taken socially, culturally, economically, politically, and legally to ensure women's empowerment and gender equality are topical discussions. Part of these efforts yielded gender affirmative action policies pronounced in the National Gender Policy of 2012 and 2014 and enshrined in the Gender Equity and Equality Act of 2016. However, the implementation of gender affirmative action policies, particularly female quotas in Zambia, has sparked considerable debate. Questions have arisen regarding the constitutionality of female student quotas and their long-term effects on human rights. Concerns persist over whether these affirmative action policies result in reverse discrimination, undermine human rights by perpetuating inequality, or subject women to being perceived as needing special treatment. In Zambian higher education, the broader implications of female student quotas in admissions and sponsorship with regard to human rights and constitutional legality remain underexplored. This paper addresses these emerging issues by critically examining the legality of female student quotas in public higher education and their effect on human rights. The paper presents the reflections of a sample of higher education administrators, academicians, and students on female student quotas for admissions and sponsorship in three public universities in Zambia.*

*The paper utilizes qualitative research, founded in critical social analysis theory, to reveal how female student quotas, particularly their consideration in admissions and sponsorship into higher education, have undermined constitutional and human rights precepts on equality. Through in-depth interviews, the participants contest female student quotas for admissions and sponsorship and illuminate the issues arising from a tilted focus on females in accessing higher education. The participants call for alternatives in policies that focus on merit and socioeconomic status-based considerations instead of gender. The paper gives a voice to academicians, administrators, and students whose insights may contribute to constitutional legality and adherence to human rights in higher education with regard to admissions and sponsorship. The paper concludes that affirmative action policies, particularly female quotas, in public tertiary education in Zambia need to be restructured to reflect evolving social dynamics and to ensure policies that adapt over time remain inclusive and firmly rooted in intersectional sensitivity to both gender and socioeconomic disadvantage, ensuring that support mechanisms uplift all those who are genuinely least advantaged, based not solely on their gender.*

**Keywords:** Human Rights, equality, fairness, and Rawls' principles of justice.

## Introduction

Affirmative action policies in their different permutations have been lauded and criticized by different analysts and scholars. (Dessler, G., 2005). There are growing debates that affirmative action policies result in what is termed reverse discrimination, hence questioning the fairness and justness of such policies. Further arguments are that affirmative action subjects minority and marginalized groups to being treated as second-class citizens who need a different yardstick to attain certain feats, thereby promoting inequality. On the other hand, there are arguments that affirmative action policies promote equality as they assure the participation of minority groups or those marginalized for a considerable time, hence enhancing fairness and respect for human rights. The implementation of Affirmative Action, particularly in education, has globally sparked considerable debate. (Wangala, T., 2009). In countries like the

United States of America, where human rights law and education law have advanced, affirmative action policies are already fertile ground for litigation, with some states abandoning affirmative action policies. (Tiernay, W., 1997). Despite most of the debates in education being race-based, gender affirmative action policies have also become topical discussions in a number of jurisdictions, centering around employment, politics, and education.

In Zambia, efforts by the government meant to increase the access of girls and women to education have been seen in affirmative action policies pronounced by the National Gender Policy of 2012 and 2014, also enshrined in the Gender Equity and Equality Act of 2016, some of which have resulted in preferential treatment for women and females in the education sector. (CEDAW/C/ZAM/3-4). Some measures include preferential treatment for girls and women in the form of scholarships and loans, as well as reduced cut-off points or entry qualifications for females on admission at different qualification stages in the education calendar. Female student quotas have also been implemented by public tertiary institutions in their admissions. (University of Zambia Calendar 2014–2016). This paper critically analyses gender affirmative action policies in public tertiary education in Zambia by assessing the implications of allocating female student quotas in admissions and sponsorships amid growing debates on the legality and fairness of affirmative action policies. The paper takes a qualitative research approach to analyse and draw lessons on the general concept of affirmative action from a legal perspective and critical social analysis, with the aim of contributing to gender equality efforts and measures that are anchored in human rights and social justice, a pinnacle of every democratic society. In this study, gender affirmative action will generally be defined as policies and actions that favour the female gender by allocating female student quotas in admissions and sponsorship in public tertiary institutions in Zambia, and public tertiary institutions will refer to universities financed by public funds in the country. (Higher Education Act, 2013).

## **Background to the Problem**

Zambia gained its political independence from Britain in 1964, and the educational system it inherited was largely underdeveloped. (Sikwibele, A. et al., 2021). Kelly, as cited by Kasonde

Ng'andu, noted that, "At the time of independence, there were only 107 Zambian university graduates, of whom four (04) were female" (Ibid). Measures such as female student quotas have been practiced in public tertiary institutions in Zambia through admissions and sponsorship, with the aim of increasing access to education for women and girls, as far back as the early 2000s (CEDAW/C/SR.551 and 552).

By 2019, Zambia had made some progress in achieving gender parity in university education. There was an increase in female participation in commercially oriented fields such as Humanities, Business, and Education, with female participation around 50%. However, in Science, Technology, Engineering, and Mathematics (STEM) courses, there was low female representation, which stood at 25% of all learners (National Higher Education Policy, 2019).

The Constitution of Zambia, which is the grand norm of the land, as revised in 2016, in its preamble confirms the equal worth of men and women and their right to freely participate in, determine, and build a sustainable political, legal, economic, and social order. (Constitution of Zambia, Amendment Act, 2016). Article 8(d) of the Constitution recognizes human dignity, equity, social justice, equality, and non-discrimination as part of the national values for Zambia. Furthermore, Articles 23(1) and (2) of the Constitution of Zambia provide for protection against discriminatory laws and the discriminatory treatment of persons on grounds of race, tribe, sex, place of origin, marital status, political opinions, colour, or creed (Ibid).

Zambia was part of the 25 countries that met at Salamanca in Spain (UNESCO Report, 1994) that agreed to adopt the Salamanca Framework of Action, which calls for respect for individual rights to education without discrimination and reaffirmed the right to education of every individual as enshrined in the 1948 Universal Declaration of Human Rights (UDHR). (UDHR, 1948). Zambia has also acceded to and ratified international treaties that guarantee human rights without distinction based on sex or other grounds and has joined the international community in endorsing several plans of action for the full, equal, and beneficial integration of women in all development activities, including what has come to be generally accepted as the constitution for international standards for women's rights: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

It is against this background that the paper analyses whether these affirmative action policies enhance equality in public higher education or result in reverse discrimination, through the reflections of academicians, administrators, and students. The problem is that a number of studies reviewed reveal a lack of general agreement on the justification of affirmative action policies. (Dessler, G., 2005). Studies in education generally in Zambia reveal a lack of acceptance of gender affirmative action among administrators in education. (Siabona, G. S., 2013). However, the broader perception of academicians and administrators on female student quotas in admissions and sponsorship in public tertiary institutions, as an affirmative action measure, is not known.

The objective of this paper is to critically analyse the application of female student quotas as affirmative action in Zambian public tertiary institutions through the reflections of a sample of higher education administrators, academicians, and students on its effect on equal opportunity in education and its bearing on human rights. The article endeavors to answer the question: "What are the perceptions of tertiary institution administrators, academicians, and students on female student quotas, and how do these perceptions shape the discourse around fairness, equality, and social implications of female student quota allocations in public tertiary institutions?"

This paper addresses pressing legal, social, and policy concerns related to affirmative action in Zambia's education sector, particularly public tertiary education. The perceptions of administrators, academicians, and students provide valuable insight to lawmakers and policymakers on the perceptions of those they govern and reflections on equality and human rights. The paper is also beneficial to gender activists, civil society organisations, and human rights activists. The paper's enquiry into issues of equality, fairness, and societal acceptance of the policies to avoid social divides, as well as human rights considerations, will enhance social justice, fairness, and human rights. Consequently, the study contributes to affirmative action discourse in the region, the continent, and globally. The research has the potential to influence both national and international debates on affirmative action and gender equality, hence contributing to global peace and peaceful coexistence. The rationale of the paper is that the principles of equality and respect for human rights need to be protected. Education law demands that all stakeholders in education are assured of the security of lawfulness. (Hagene,

L. M., 2015). One of the ways of ensuring the protection of equality and respect for human rights is to continually analyse policies adopted and implemented by the government, such as affirmative action policies. The lack of such analysis is a possible perpetuation of an injustice that might be difficult to reverse with time.

To inform this article, the research was delimited to selected public tertiary institutions in Lusaka, Zambia. There are nine public universities in Zambia, and five of these public universities are located in Lusaka. (HEI, 2022). The research targeted three universities in Lusaka to assess how these institutions implemented affirmative action policies and analyse the perceptions of the institution's administrators, academicians, and students regarding the policies' legality and fairness in tertiary institutions. The research does not get into discussing the rudiments, benefits, and theories of education but only uses education as one major area where affirmative action policies are operationalised. The research was qualitative in nature and purposively selected a sample of academicians and administrators for interviews, and students for focus group discussions, as tools for the collection of primary data. Secondary data was collected through desk research and analysed through thematic analysis against the theories of justice as espoused by John Rawls. It would have been preferable to assess all universities in all the provinces of Zambia; however, due to time limitations, the tertiary institutions selected were concentrated in Lusaka. The article analysed the data against theories and concepts relating to justice and human rights.

### **Definition of Affirmative Action and other Key Terms**

**Affirmative Action:** Affirmative action refers to a body of policies and procedures designed to eliminate discrimination against marginalized groups, including ethnic minorities and women. Affirmative action is effected when a deliberate action is taken that gives such groups priority in admissions, appointments, and/or nominations to positions of responsibility. (Wanyande, P., 2003). Its main objective is to redress the effects of past discrimination. (Ibid). Steven defines affirmative action as a positive step taken to correct conditions resulting from past discrimination or from violations of law. (Steven, H. G., 2016). Osongo further cites Tierney as having identified three forms of affirmative action: a compensatory procedure to address past injustices, a corrective tool to address present discrimination, and an intervention

to promote social equality and diversity in a given society. (Osongo, J., 2009). Affirmative action is assumed to be a temporary measure aimed at enabling members of the disadvantaged group to participate in those areas in which they have been disadvantaged. (Ibid). The assumption is that at some point, when such groups have been empowered and have acquired what is necessary to enable them to participate and compete with others, affirmative action will cease. (Osongo, J., 2009). A more advanced affirmative action concept had evolved in higher education. It included voluntary preferential treatment for women and ethnic minority group members to overcome the effects of discrimination and racism; but, significantly, this concept functioned without the necessity of proving past discrimination in a courtroom. (Pettit, N. J., 1999). Ellemers, as cited by Faniko et al., observes that another form of affirmative action is the allocation of quotas in admissions for marginalized groups like women. (Faniko, K., 2017). Notwithstanding this critique, there is evidence that an increased representation of women in management is not only legitimized by the need to overcome a historically rooted imbalance but also boosts corporate performance. (Ibid).

**Sex:** Refers to biological differences between women and men. Biological differences are fixed and unchangeable and do not vary across cultures or over time. (Analysing Statistics with a Gender Lens: Women and Men in Zambia).

**Gender:** Refers to attributes and opportunities associated with being male or female, socio-cultural relationships between women and men and girls and boys, as well as the relations between different groups of women and different age groups. (Higher Education Policy, 2019). In this paper, gender is used in reference to socially constructed differences in the attributes and opportunities associated with being female or male and to social interactions and relationships between women and men.

**Gender Equality:** Means women having the same opportunities in life as men, including the ability to participate in the public sphere. (Ibid).

**Higher Education:** Means post-secondary education leading to qualifications provided at colleges, tertiary institutions, or similar education establishments. (Ibid).

**Tertiary Education:** Refers to education provided after secondary education (Higher Education Policy, 2019).



**Tertiary Institution:** Refers to an institution providing tertiary education. (Ibid).

**Public Education Institution:** Is an education and skills training institution administered or controlled by the Ministry or established and maintained using public funds. (Ibid). Public Higher Education Institution (HEI) is an HEI that is owned by the government or a local authority and is financed out of public funds, with public funds having the meaning assigned to it in the Public Finance Act, 2004 (Higher Education Act No. 4 of 2013).

**Equity:** Refers to affording a fair chance in education and skills training to learners.

### **The Affirmative Action Debate**

As earlier alluded to, affirmative action policies with their different permutations have spurred a number of debates on their constitutional basis, justification, and bearing on human rights. Controversy on the constitutionality of affirmative action policies persists despite cases gracing the highest courts, even in jurisdictions that coined the policy, such as the United States of America (USA). (W. Tierney, 2017). In the United States of America, for example, the country that is accredited for coining the words '*affirmative action*,' the debate is growing, with some States abandoning affirmative action policies in institutions of work and education. (D. Wade et al., 2004). The USA has an ambivalent attitude towards affirmative action, which includes an ongoing controversy over whether or not it is constitutionally permitted. (N. M. Lederer, 2013).

As a way of illustration, on racial affirmative action, the USA Supreme Court ruling in *Brown v. Board of Education* (1954) monumentally changed educational opportunities available to minority students. The Court unanimously voted that segregated educational facilities were unequal and therefore violated the equal protection clause of the Fourteenth Amendment of the Constitution. The Court mandated desegregation of all public schools in the country. It overturned the previous decision in *Plessy v. Ferguson* (1896, 163 U.S. 537), which permitted separate but equal public facilities for minorities, and pushed policymakers to examine other principles governing education for people of color. Yet in 1995, on affirmative action in the workplace, the United States Supreme Court in *Adarand Constructors, Inc. v. Peña* (1995, 515 U.S. 200), held that affirmative action was not unlawful if it also advanced the employer's



general business interest and was temporary in nature. Later cases such as *Gratz v. Bollinger* (2003, 539 U.S. 244, 123 S. Ct. 2411) stated, however, that quotas were often considered arbitrary measures that did not take the applicants' personal ambitions and motivations into account and resulted in the selection of disqualified applicants, thereby discriminating against motivated, qualified men. (Ibid).

*Fisher v. University of Texas* (2016, 136 S. Ct. 2198) still brought out contradictory statements on the constitutionality of affirmative action policies. In both cases, the USA Supreme Court acknowledged that there was plenty of room for interpretation and that there was no clear answer when it came to the legality of employer (*Adarand Constructors, Inc. v. Peña*, 1995, 515 U.S. 200) or school (*Gratz v. Bollinger*, 2003, 539 U.S. 244, 123 S. Ct. 2411; *Fisher v. University of Texas*, 2016, 136 S. Ct. 2198) affirmative action programs. The irony is that both camps, for and against affirmative action policies, use constitutions to justify their legal basis. (Ibid).

T. Sowell, who carried out one of the most comprehensive studies on affirmative action, noted that a number of countries implemented affirmative action without any time frame attached to it. (Sowell, 2004). Sowell claims that the original concept of affirmative action imposed in some countries is ill-conceived. In Sowell's words:

Between the original concept of affirmative action and the goals and timetables actually imposed lies an ill-conceived mixture of unsupported assumptions and burdensome requirements which remain ineffective because of their indiscriminate nature". (Ibid).

Sowell further observes, 'What is remarkable is how seldom the notions of affirmative action have been tested empirically, or have even been defined clearly or examined logically, much less weighed against the large and often painful costs they entail' (Ibid).

### **Rawls' Theory of Justice**

According to Freeman, some of the earliest thinking about justice is found in Aristotle's writings. It was he who distinguished corrective justice and distributive justice. The law of tort is often justified in terms of corrective justice since its objective is to do justice between

the parties without taking into account larger distributive issues in society as a whole. (Freeman, F.D.A., 2005). Freeman asserts that most contemporary writing about justice is about distributive justice, about the appropriate distribution of goods. In his *Nicomachean Ethics*, Aristotle puts forward the view that goods should be distributed to individuals based on their relative claims. Thus, goods might be distributed according to needs or desert or moral virtue. (Ibid). Freeman opines that one of the most interesting modern attempts to defend principles of justice is found in John Rawls', 'A Theory of Justice.'

The Article is underpinned by the propositions of justice by Rawls. Rawls' theory of distributive justice emphasizes: (i) maximization of liberty subject only to such constraints as are essential for the protection of liberty itself; (ii) equality for all, both in basic liberties of social life and also in the distribution of all other forms of social goods, subject only to the exception that inequality may be permitted if it is for the greatest possible benefit of those least well off in a given scheme of inequality (the difference principle); and (iii) fair equality of opportunity and the elimination of all inequalities of opportunity based on birth or wealth. (Freeman, F.D.A., 2016).

Rawls argues that citizens in a constitutional democracy who hold opposing, even irreconcilable, conceptions of the good can find a shared basis of reasonable political agreement through an overlapping consensus concerning a political conception of justice, which would provide fair terms of cooperation on the basis of mutual respect and trust.

### **Key Concepts**

According to Delahunty, the debate over affirmative action stems from two contrasting forms of justice. Corrective justice and distributive justice involve the conception of fairness or equality (R. Delahunty, J., 2008). Therefore, the research was guided by the concepts of fairness and equality. The argument for affirmative action is that it helps ensure that selection procedures and decisions are fair. This argument has special relevance to public debates and was also part of the amicus brief submitted by the American Psychological Association in the Michigan cases. (Crosby, F. J. et al., 2006).

Injustice consists in the absence of fairness or equality and arises when one person has too much or too little in relation to another. (Ibid). Both corrective and distributive justice assume a different baseline for measuring equality or fairness. Corrective justice looks at redressing an inequality which has been interfered with. It is in the discussion about the rationale of tort law that we see corrective justice most clearly. (Freeman, F. B. A., 2016). Corrective justice takes as its baseline the condition in which each person holds what lawfully belongs to him or her. Under corrective justice, injustice arises when one person inflicts harm on another that deprives the latter of what is due to him, thus upsetting the relationship of equality. The law corrects this inequality by requiring the offender to make the injured party whole, by restoring the equality that existed before the former's wrongdoing occurred. Corrective justice is inherently bipolar; it involves restoring two parties, a violator and a violated, to the relationship that existed between them before the violation. (Ibid).

Distributive justice, on the other hand, consists in the division of some benefit or burden. Aristotle cites honors and money in accordance with some criterion that measures the relative merits of the distributees. What would be fair and equal would be to distribute burdens and benefits on merit in accordance with what one puts in. According to Aristotle, although the idea that burdens and benefits should be distributed according to merit is universally accepted, the criterion of merit is contested. (Ibid).

## **Insights into the Perceptions of Academicians, Administrators, and Students Regarding Equality, Fairness, and Societal Implications of Female Student Quota Allocations**

### ***Introduction***

The Study targeted three (03) Universities out of five (05) Universities in Lusaka. Affirmative Action Policies or measures taken by the three Universities were discussed with purposely selected registrars, academicians, administrators, and students. Interviews with relevant administrative officers at the Ministries of Education and the Higher Education Loans and Scholarship Board were also conducted. The interviews gathered information on the participants' insights into their perceptions of affirmative action as regards its fairness, societal impact, and contribution to promoting gender equality. Focus group discussions with

students were conducted to explore their perceptions regarding equality, fairness, and societal implications of female student quota allocations in public universities and to encourage more participation.

### ***Overview of the Affirmative Action Measures in the Public Tertiary Institutions Studied***

The Study established that all universities studied implemented 30% female quota gender affirmative action policies, among other forms of affirmative action which included rural and disability affirmative action policies. One Institution had a quota for foreign nationals.

The study established that the 30% female quota gender affirmative action was applied differently by the Universities. For one of the universities, a 30% female quota meant ensuring that there was at least 30% representation of females, even if it meant according lower entry points to females compared to males on admission in some courses. For example, where the institution would require straight "ones" (distinctions) in all the required 5 subjects, resulting in 5 points, they would accept 7 points from female candidates to allow at least 30% access for females into those particular Schools. A respondent from another University explained that when considering candidates for admission, 30% of the required number would be reserved for female candidates to compete among themselves, and then everyone else, regardless of gender, would compete for the other quota allocated to everyone on merit, depending on the competition. The 30% female quota would also be competed for on merit, but if it meant lowering the required points to ensure that the 30% female requirement was met, then that would be applied, and the required points would be considered by Senate.

The Study also revealed that there was a lack of consistency in the implementation of affirmative action measures, as sometimes the policy would be applied only to particular schools or courses, and at times it would not be applied at all. At the other University, the policy had not been followed for two years. As explained by one of the respondents, '*Senate would give a directive when and to which schools gender affirmative action would apply*'.

On Loans and Scholarships, the study established that before the establishment of the Higher Education Loans and Scholarship Board (HELSB), students received bursaries where 30% of the bursaries were reserved for female candidates. After the establishment of HELSB in 2016 until 2023, loans were given according to quotas, with 30% allocated to females under gender

affirmative action, 30% under rural affirmative action, 5% disability affirmative action, and 35% being competed for on merit. For 2024, the Study established that HELSB applied a 50/50% gender allocation, allowing females to compete among themselves in their 50% and males to compete among themselves in the other 50%. These percentages were aggregated according to the eligible candidates received from each district, taking into consideration the population of eligible candidates from the districts. The Study was informed that the change was necessitated because stakeholders were of the view that the urban male was being disadvantaged.

For Scholarships, the study was informed that the HELSB was managing and administering scholarships from different countries, which would specify the conditions to be satisfied by the candidates. Others would specify if the target candidates for sponsorship were female or those with disabilities. Another interviewee explained that some scholarships in certain fields were only available for female students, as it would be decided that every female that applied in that field and met the standard requirement would receive a scholarship automatically to encourage them to enroll in such programmes. There were also a number of scholarships from other stakeholders, like Non-Governmental Organisations, that were focused on females, who paid straight to the universities under women empowerment programmes. The Study revealed that no such programmes existed for males. The study further established that most of the male students enrolled on self-sponsorship and were high defaulters in payment of School Fees, with a number of them having to drop out of school and repeat semesters because they could not write exams due to failure to pay school fees. On an aggregate of 100%, the study was informed that 70% of male students defaulted in terms of fees in different programmes.

### ***Perceptions on Equality and Fairness in Admissions***

The study revealed that the general perception from administrators and academicians was that female student quotas were not fair and did not result in equality. There was a general perception that the quota policy was discriminatory and violated the Constitution of Zambia, which prohibited discrimination on sex lines. One of the respondents was of the view that female quotas centered on the rising numbers of females at the expense of males. Another respondent remarked, *'You cannot put equality and preferential treatment for one gender in one*

sentence; the moment you begin to speak of preferential treatment for one sex, you speak discrimination and cannot speak of equality'. It was the submission of another that quotas lowered the requirement for admissions for females, hence admitting females who would not have qualified if considerations were made on merit, thereby leaving out the qualified male who should have had access to tertiary education and could have better contributed to the development of the country than those pushed to fulfill a quota.

The study established that the entry requirement for public universities was five credits, according to the University circulars and websites studied. A respondent observed that the standard requirement of 5 'O' level credits had never been compromised and, despite putting in place points to meet due to competition, all the females met the requirement and managed to go through the various courses well. "When teaching or marking in universities, we don't look at scripts and say this is female or male; we just mark, and the girls pass and do very well, meaning there is no compromise on quality," the respondent observed. One of the respondents perceived gender affirmative action measures as a compromise of admitting students on merit, emphasizing that admissions under a competitive situation for Government resources required the one with the best performance, regardless of sex, to get admitted. "At no point should the criteria be changed, whether in schools or the place of work, for the sake of having one gender on board; that is compromising quality," they submitted.

The view among administrators was that female student quotas had served their purpose, as girls presented brilliant results on admissions compared to male students. "The entry points would be those with ones in all the required five subjects, and we would have a lot of female students with that standard compared to males to choose from. The female student quotas measures have played their role and are now unnecessary; if not careful, the country will soon have to apply similar policies for males to ensure their equal access to tertiary education. I actually think in some faculties like nursing, we need to start doing that because there are just females, and yet it is important that we have both female and male nurses in our hospitals," one of the respondents remarked. The research established that the trend had greatly changed in terms of entry results for females, with females outdoing their male counterparts in terms of the points required at the entry point, even in Schools traditionally believed to be male-dominated, like medicine. In schools like engineering and agriculture, generally, fewer females applied compared to males. "In my

view, it's because the females just don't like the physical aspect of the profession, not because they wouldn't qualify. It's just a lack of interest," an academician remarked.

Some respondents perceived affirmative action policies as necessary and fair as they had contributed to female inclusion in different fields, including those which were male-dominated, hence contributing to gender equality and the enhancement of human rights for both males and females in education. It was their view that affirmative action through female student quota allocations was a measure that helped cure the discrimination that continued to exist in society against women but acknowledged that the social trend had changed, with society coming up with different programmes to encourage a girl child in education, such as the "keep our girls in school programme," which prohibited schools from expelling a girl child who fell pregnant.

Another respondent perceived affirmative action programmes as a necessity and fair but proposed that the programmes needed to be refocused and never aimed at lowering the standard for one gender through quotas. The respondent's view was that even if a quota existed, and if the standard set for everyone was five points, even those in that quota must meet the 5-point requirement. "In that way, we would not be compromising standards or getting girls with lower qualifications at the expense of a qualified boy". *'My perception is that quotas, as they are applied, lower the standard for the girl child to meet the quota. My view is that if the floor standard has been set, all candidates, whether in a quota or not, should meet that standard, such that if there are no females meeting the standard to make the quota, it should not matter; that percentage should be left to the males that meet the standard. That is what I would consider fair to the individuals and the country, as there would be no compromise on quality'.*

Another respondent explained that in their view, affirmative action could only work if it were targeted. *"This would require identifying the districts where gender parity had not been reached and differentiating between biological challenges and non-biological challenges around which affirmative action programmes could be framed. An example of a biological issue that proved to be a challenge for girl children to go to school was failure to access sanitary pads so that they would be comfortable in school even on days when they were faced with the condition that arose because they are female. To this effect, programmes could be developed to help every girl in schools and communities have access to sanitary pads; that is the kind of affirmative action needed,"* a respondent suggested. The



respondent further explained that from their experience of working in a university and education generally, they noted that there were fields where, no matter the sponsorship and scholarships made available to females, few females showed interest. In their view, the situation was not going to change even in the near future because it can be attributable to their femininity and biological nature. The respondent cited fields which demanded physical involvement like mechanics, agriculture, architecture, and mining engineering, to mention a few. The perception was that due to the physical nature of certain works, females did not show interest in such fields, except for a few exceptions, proving that biological and physical considerations play a role in choices of study. One of the respondents at the Ministry of Education pointed out a public university outside of Lusaka whose focus was sciences and revealed that the population of students at that university was male-dominated despite having scholarships for females to encourage female participation in the schools at that university.

### ***Focus Group Discussions with Students***

The broader dialogue with students revealed that there were mixed feelings about female student quota affirmative action measures in universities. The general view was that admissions should be performance- and merit-based. It was a general perception that female student quotas lowered the standard for females, were discriminatory, and not fair. The male participants believed females received preferential treatment at all stages of qualifications, with lower cut-off points for them at grade 7 and grade 9, including admissions into universities, which left out a boy who did better than them at all stages. The general agreement was that a 50-50 gender consideration is what would be fair and would encourage the inclusion of both genders. Others preferred a gender-blind approach on admission, as that is what would not be discriminatory. While admitting that there were a number of girls who performed brilliantly, it was the perception of males that they had better points on admission into the universities since their competition was tougher compared to girls. *'It is rough for us; our competition is very tough. They may require 5 entry points for boys and 7 entry points for girls; the guy with 6 points will not be picked, while a girl with 7 points will be picked,'* he remarked.

Some of the participants who were females refused to be associated with the notion of being admitted on preferential treatment and emphasized that they were in universities on merit

and not because of a lowered standard accorded to them on admissions. *'In all honesty, I hate the stigma that comes with some of these policies, we should just compete equally, I had ones in all my subjects and there are many other girls like me on campus and still many trying to get admitted, so why this perception of quotas and lowered standards?'* she questioned. Responding to the question of whether they thought gender affirmative action was necessary on admissions to ensure the inclusion of both genders in universities and certain courses, the general view was that it was not necessary, as admitting on merit will allow both genders that deserved to be admitted to have access. *"When we were writing exams, we were told the university wanted the best of the best performers and that the best of the best had no sex. So whoever is part of the best of the best whether male or female are the ones to be admitted,"* a male respondent said. One of the female participants explained that she was aware that there are certain courses in which the points for girls were reduced, like in some courses in the School of Natural Sciences, and felt that it was not fair. *'I think we should apply for courses according to our strengths. only those girls with the same points as their male counterparts should be admitted as that's what should have been fair and proven that girls are equal performers and exceptional even if they were just a 10%'*, she remarked.

### ***Perceptions on Loans and Scholarships***

On Scholarships and Loans, there was a general perception that the quota system advantaged female students, some of whom were not in vulnerable situations, at the expense of vulnerable male candidates. *"What should drive the policies is vulnerability and not sex,"* one of the respondents submitted. One of the respondents explained that they did not believe vulnerability could be categorized in terms of gender or rural area. *'here are people living in rural areas who are economically better off than those in urban areas and secondly in both urban and rural areas when hunger hits, it hits both the male and female and if the school is at a distance, the distance affects both male and female, so we should not use gender and rural as parameters of vulnerability,'* the respondent remarked. Another respondent was of the perception that quotas for females allowed more females access to tertiary education, which was helping in bridging gender parity since, in their view, poverty had a female face, and therefore having a quota for females targeted more vulnerable individuals. Other respondents submitted that because a girl child was considered as a second parent in most households, subjecting them to so many responsibilities that affected their performance in school, it was fair to consider lower points

for admissions as long as they were within the minimum requirements for that particular higher education institution.

### ***Societal Implications***

The general perception was that affirmative action policies that bordered on preferential treatment, such as female quotas, had far-reaching negative societal implications. One of the respondents explained that the attention given to a girl child from homes, early childhood education, primary school to secondary school, and through different programmes in tertiary education played a major role in the shift in the performance of a girl child but was done without considering the boy child, hence the boy child being affected both socially and academically. *'Year by year, we keep seeing the grades of the boy child going down judging by the results of applicants seeking admissions in the university, if we are talking about equality, both gender need to be on board,'* the respondent observed. Another respondent went further to cite the social focus on the girl child in terms of shaping character by families and less focus on the character of a boy child by families as one of the reasons why there were more boy children on the street and those abusing alcohol and drugs. *'If you follow the news of late, the increase on substance abuse and insanity is more dominant on boys and our boy child is running into the street and turning into junkies because we have not paid attention to them socially and they also feel left out academically,'* the respondent remarked. There was another submission that gender affirmative action as applied in tertiary institutions, as in many other aspects in Zambia, did not take into consideration the cultural, traditional, and social values as a country, as the affirmative action measures seem to be Western-influenced. In this regard, the respondent was of the perception that this was the reason why it seemed that the fight for equal rights in education only had a female face, leaving the boy child behind, who has failed to understand and comprehend the changes in our social and cultural outlook as a society. The male child is failing to comprehend the Western version of an independent, educated woman, and even the female herself is sometimes confused on her role in society, hence causing a number of failed marriages in our society. The respondent suggested that activists for women's rights should not only fight for women but also target educating males on the need for this empowerment and mind change – that it's not rivalry but partnership.

In 2022 alone, the DEC arrested a total of 5,061 persons. Drug and substance abuse accounted for 3,794 of the cases. Out of the arrested persons, 4,969 were Zambians, representing 98.2 per cent, while 92 were foreign nationals, representing 1.8 per cent. Further, out of the total number of arrested persons, 4,725 were males, while 336 were females, representing 93 per cent and 6.6 per cent respectively. In addition, 325 of the arrested persons were children, representing 6.42 per cent. The research established that young people between the ages of 10-24 years topped the list of patients being admitted at Chainama Mental Facility in Lusaka due to heightened cases of alcohol and substance abuse. Of the group, male children were more affected than girls. In 2023, the Hospital recorded 22,750 clients, with 56 percent of that figure battling alcohol and substance abuse, with more boys than girls topping the number. (Report on Matters on Drug and Substance Abuse among the Youths in Zambia for the Third Session of the Thirteenth National Assembly: 2023).

### **Theories and Affirmative Action Policies**

As alluded to earlier, the debate around affirmative action stems from two contrasting forms of justice: corrective and distributive justice, evoking the concepts of fairness and equality. Contrasting corrective justice and distributive justice regarding the conception of fairness or equality would situate the discussion around the female student quotas debate. As earlier discussed, injustice consists in the absence of fairness or equality and arises when one person has too much or too little in relation to another. Viewed from a corrective justice point of view, female student quotas in admissions and sponsorship in higher education institutions would be viewed as redressing an inequality which has been interfered with. Under corrective justice, injustice arises when one person inflicts harm on another that deprives the latter of what is due to him, thus upsetting the relationship of equality. The law corrects this inequality by requiring the offender to make the injured party whole by restoring the equality that existed before the former's wrongdoing occurred. Corrective justice is inherently bipolar; it involves restoring two parties, a violator and a violated, to the relationship that existed between them before the violation.

Distributive justice, on the other hand, consists in the division of some benefit or burden. Aristotle cites honors and money in accordance with some criterion that measures the relative

merits of the distributees. What would be fair and equal would be to distribute burdens and benefits on merit in accordance with what one puts in. According to Aristotle, although the idea that burdens and benefits should be distributed according to merit is universally accepted, the criterion of merit is what is contested.

### **Rawls' Theories of Justice and Affirmative Action**

The theories of justice as espoused by Rawls are centered on distributive justice. Rawls argues that citizens in a constitutional democracy who hold opposing, even irreconcilable, conceptions of the good can find a shared basis of reasonable political agreement through an overlapping consensus concerning a political conception of justice, which would provide fair terms of cooperation on the basis of mutual respect and trust. Rawls uses a 'refurbished' version of the social contract argument. He claims that his principles are those that free, rational persons concerned to further their own interests would accept in the initial position of equality as defining the terms of their association. Rawls hunts out mutually acceptable ground rules.

In his original position, Rawls imagines a hypothetical society where policies are designed without regard to gender, race, abilities, and religion, among others. He calls this a veil of ignorance, where rational people generally would choose rules that are fair to everyone because they might end up anywhere in society. Rawls spells out two principles: the equal liberty principle and the difference principle. Under the equal liberty principle, everyone has equal basic rights and liberties. Under the difference principle, Fair Equality of Opportunity (FEO) would mean everyone having a fair chance to attain something. The difference principle allows social and economic inequalities only if they benefit the least advantaged members of society. Simply put, Rawls' distributive justice justifies inequality if that inequality improves the lives of those worse off. The ethos is that if that policy is designed from behind a veil, the idea is that that system must be just so that anyone at the bottom must benefit. Rawls' theories of justice have been used to justify affirmative action policies. There are arguments that affirmative action policies help level the playing field for students who do not have the same preparation, resources, or support. The argument would be that affirmative action would be justified if it improves outcomes for historically marginalized communities. These

communities would be based on gender, race, ethnicity, or religion. Even though Rawls' writings originally did not address gender inequality, on gender, particularly female quotas, fair equality of opportunity has been construed as positions being open to all under conditions of fair equality of opportunity. That does not only mean formal legal access but a genuine chance to succeed, regardless of gender; and if women face systemic barriers such as biased expectations, underrepresentation in STEM, and childcare burdens, then FEO is not truly met. The argument is that women have historically been the less advantaged group due to discrimination, stereotypes, and lack of mentorship or representation.

### **Rawlsian Analysis of Gender-Based Affirmative Action in Zambian Higher Education**

The study utilized qualitative thematic analysis using Rawls' theories of justice as a normative framework. Through interviews and focus group discussions, the research collected primary data. The principles of justice by Rawls include the veil of ignorance, fair equality of opportunity (FEO), and the difference principle. Recurring themes related to meritocracy, perceived discrimination, changing gender performance trends, and the impact of affirmative action on both genders. These themes are interpreted within Rawls' justice. Normative evaluation revealed misalignments between policy goals and perceived fairness.

The general conclusion from the findings above reveals that while gender-based affirmative action aims to correct historical inequalities, a strictly gender-focused approach that excludes poor men raises questions under Rawls' theory of justice. According to Rawls' Difference Principle, policies are only just if they benefit the least advantaged members of society. If a society supports women through affirmative action regardless of class but neglects men born into poverty, it risks violating both the Difference Principle and Fair Equality of Opportunity. Rawls emphasizes that justice must not rest on morally arbitrary factors such as birth or class. Therefore, a system that prioritizes affluent women over impoverished men fails to meet the criteria of fairness behind the veil of ignorance. True justice, from a Rawlsian view, demands intersectional sensitivity to both gender and socioeconomic disadvantage, ensuring that support mechanisms uplift all those who are genuinely least advantaged. Analyzing the reflections of academicians, administrators, and students in this study against the veil of ignorance as espoused by Rawls would require beginning from the concept of the 'original

position,' where rational individuals design societal rules behind a 'veil of ignorance,' not knowing their gender, class, or social standing. From this standpoint, any rational person would design policies that do not favor one group arbitrarily. The findings of this study indicate that current gender-based quotas in Zambian higher education are perceived as disproportionately benefiting female students, some of whom may already be privileged, while excluding poorer or better-qualified male students. This perception suggests a deviation from Rawls' foundational principle, as a just system should be blind to arbitrary distinctions such as gender alone and instead prioritize policies that address genuine, multi-dimensional disadvantage. A few deductions are made from this veil of ignorance using Rawls' principles.

### ***Fair Equality of Opportunity Principle***

Rawls' principle of Fair Equality of Opportunity requires that individuals with the same talents and willingness to work should have equal access to opportunities, regardless of their background. The study reveals perceptions among administrators, academicians, and students that gender quotas in higher education may be compromising this principle. Reports of lower entry thresholds for females, despite their improving performance, create a perception that merit is being sacrificed. Rawls would view such an approach as unjust if it no longer serves to equalize opportunity but instead introduces new forms of discrimination. A system adhering to FEO would ensure that all students who meet a universal standard are admitted based on merit and genuine need, not gender alone.

### ***The Difference Principle***

The Difference Principle allows for inequalities only if they benefit the least advantaged. While the intent of female quotas was to address historical gender disparities, the findings indicate that these measures may now be excluding vulnerable male students, especially those from poor or rural backgrounds. As some respondents noted, the shift in educational outcomes, with females often outperforming males, necessitates a re-evaluation of who constitutes the 'least advantaged.' Rawls would argue for a dynamic and responsive approach to affirmative action, where policies evolve to reflect current realities and continue to serve those most in need, regardless of gender.



## Recommendations

Affirmative action policies should serve as tools to achieve equity, fostering an inclusive society while adhering to principles of justice and respect for all individuals' rights. Policies that appear discriminatory using only gender lines may not be perceived as just by rational individuals in society, which may require a refocusing of the policies. Negative perceptions of affirmative action as discriminatory undermine its societal acceptance. For affirmative action policies to have some appreciable acceptance in Zambia, this paper makes the following recommendations:

1. There must be a shift from gender-exclusive policies to intersectional frameworks that consider gender, socioeconomic status, geographic location, and other relevant factors of disadvantage.
2. Admission and sponsorship mechanisms must favor candidates from low-income backgrounds, regardless of gender. Balance Rights: Ensure policies do not infringe upon the rights of others but create equitable opportunities for underrepresented genders.
3. Higher Education Institutions must maintain a single academic entry standard for all students in particular specialties or courses and prioritize admission based on a comprehensive assessment of disadvantage rather than gender alone.
4. Affirmative Action Policies in Public Higher Education Institutions in Zambia should be time-bound and subject to periodic review to ensure they remain necessary and effective in addressing inequality.
5. There is a need for investment in foundational equity programmes with targeted interventions that focus on addressing systemic barriers such as sanitary pad provision, mentorship for girls in STEM, and transport subsidies to address root causes of educational disparity rather than imposing blanket quotas that may appear unfair.
6. There is a need to develop inclusive empowerment initiatives by developing programs that support both male and female students, especially the boy child who may currently be experiencing emerging social and academic disadvantages, by providing access pipelines for poor male students who may be overlooked by gender-only policies.

7. Foster transparency and public support by embracing stakeholder Engagement. For example, include both men and women in law and policy design to build consensus.
8. Educate the public on the rationale and benefits of affirmative action and encourage broader cultural change by coming up with programs that reduce gender stereotypes and unconscious bias in schools to reduce misconceptions.
9. Establish an independent cell within the Higher Education Authority to oversee the implementation of Affirmative Action Policies in Public Higher Institutions of Education and address grievances as an accountability Mechanism.
10. Advocate shared responsibility in domestic and caregiving roles to enable equal participation of both genders in education and consequently national development.

## **Conclusion**

Affirmative Action Policies are supposed to be used as a tool for achieving fairness, but only when such policies align with the principles of fairness and equality, which are indispensable to respect for individual rights and consequently respect for human rights. The findings from this study suggest that gender-based quotas in Zambian higher education must be restructured to reflect evolving social dynamics. Rawls' theories of justice would endorse policies that adapt over time, remain inclusive, and are firmly rooted in the actual disadvantage experienced by individuals, not solely their gender.

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