Int J Arts Humanit, 2025, 6(1): 309-326
DOI: 10.25082/IJAH.2025.01.005

REVIEW

Affirmative Action Act Emasculates Men in Ghana

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Received: January 1, 2025;
Accepted: February 21, 2025;
Published: February 25, 2025.

Citation: Norman, I. D. (2025). Affirmative Action Act Emasculates Men in Ghana. *International Journal of Arts and Humanities*, **6**(1), 309-326. https://doi.org/10.25082/IJAH.2025.01.005

Abstract: Introduction: Affirmative Action (Gender Equity) Act of 2024, (Act 1121) emasculates male masculinity, autonomy of women and human flourishing in Ghana. It creates the delusion that patriarchal society is paternalistically protecting women no matter how evanescent. **Methods:** This is an exploratory review of the Affirmative Action law, using the case-study approach to explain the law, identify the implementation challenges likely to emerge and the effect on male masculinity and human flourishing. Content analyses of complimentary legislation and policies on human rights were conducted, aided by lessons from other jurisdictions with Affirmative Action laws. **Results:** Act 1121 of 2024 provides Schedules for implementation that is likely to cause institutional misalignment and upheaval due to the pre-fixed quotas for women to be employed by public institutions without regard to meritocracy. The Act promotes gender-conscious discrimination against certain classes of men by denying them equal opportunity. It denies autonomy of some women, who may not need the program in order to flourish. It creates exceptionalism for women for employment, appointments and promotes entitlement mentality among women. The validity of the Act is evanescent, which could lead to new forms of discrimination, mediocrity in task performance, and social exclusion of women. The key question is: How long would the Affirmative Action program in Ghana last? **Conclusion:** Compelling society to accept Affirmative Act Law as designed by the Executive is unconstitutional. It goes against the spirit of the international conventions that were relied upon to promulgate Act 1121 of 2024, making it an illegal Act "*ab initio*". Singapore, a somewhat comparator nation, practices meritocracy which provides a just and equal opportunity for all, an example which Ghana could have followed.

Keywords: Affirmative Action Act, gender-based discrimination, evanescent law, feminine gender studies, masculine gender studies, meritocracy, human rights, Ghana

1 Introduction

To promote Affirmative Action program for the sole benefit of women in black African nations such as Ghana, is a legislative insult and assault by the lawmakers. Western institutions and governments and Western supporters of such obvious discriminatory action are also part of the attack on men in Ghana. It emphatically states that, African culture is primitive, inimical and not fit for women flourishing, therefore government has to compel society to change. This is simply because of the patriarchal position of men, an inevitable fact of life, which is consistent with the status of men in just about every nation's power dynamic between men and women. The proponents of Affirmative Action law have, perhaps, assumed that, if Affirmative Action programs are introduced in Africa for 30 or 40 years, this action would probably destroy the 'inevitability of African male masculinity' and position women, feminists and lesbians in pole positions and complete the emasculation of African men en mass. The Western liberals have managed to convince some African leaders who themselves do not believe in choice, to embrace Affirmative Action law as a vehicle to further divide the population, subjugate men and elevate a handful of women to the power plateau in those societies as a show of progress in human flourishing. These groups of supporters have forgotten that, Africa is probably the most resilient continent and contains probably the most resilient populations of the world, due to its natural resource base and the fact that the evolution of man is reported to have started with Africa. It appears Affirmative Action laws' hidden motive is to destroy African culture, African masculinity and status among men of the world. Similar sentiments have been expressed about the desire to emasculate men in the U.S. economy with "Diversity, Equality and Inclusivity" (DEI) programs, and part of the reasons why DEI programs in the Western world but particularly in United States are being rejected with speed. It is also associated with why the United States Supreme Court,

after twenty-five (25) years of Affirmative Action programs as extensions of the Civil Rights Act of 1964, cancelled it with the SEFA case in 2023 against race conscious university admissions to African Americans and women. Nicquel Terry Ellis (2024) writing for CNN on *"What is DEI and Why is it dividing America"* among other assertions, opined that 'diversity, equality and inclusivity' programs in America are seen as "[. . .] discriminatory and attempt to solve racial discrimination by disadvantaging other groups, particularly White Americans". Ellis reported that in a "2023 survey by the Pew Research Center, it was found that 52% of employed U.S. adults say they have had DEI trainings or meetings at work, and 33% say they have a designated staff member who promotes DEI. But recently, some companies have slashed teams dedicated to DEI and wealthy corporate leaders [. . .] have [. . .] decried diversity programs".

1.1 Affirmative Action in Africa: Weak Historical Foundations of Legislative Frameworks (Excluding South Africa)

Affirmative Action (Gender Equity) Act, 2024 (Act 1121) of Ghana was passed in September 3, 2024 to the applause of Women's Rights advocates, but to the muted voices of both traditional and cosmopolitan but conservative men in Ghana. Like the DEI programs in the Western industrialized nations, not everyone is favorably impressed with the goals of the program, the implementation modalities and the intended purposes. Every public policy has both desired and unintended consequences, an inevitable reality in our modern legislative and governance systems. Social change in Africa has been both intense and erratic, starting with colonialization, the independence struggle leading to the underwhelming and chaotic self-rule in all the 54 African nations with diminished hope among the populations (Kobina-Kennedy, 2009; Olasupo et al., 2016). The introduction of the Affirmative Action programs in African countries, qualifies for major and chaotic social change in the relationships between males and females with diminishing amplitude over time and deepened negative public perception about the program. Affirmative Action is defined as temporary policy measure usually introduced by the patriarchal Executive, designed to favor a disadvantaged group or reverse past discrimination against identified groups and to provide equitable interventions to prevent potential future victims from that group. Temporarily, it helps to disrupt previous institutional mechanisms that seemed to have denied equitable and fair representation of racial, ethnic minorities, women, and other vulnerable groups in socio-economic and political community or national functions or decision-making. Affirmative Action is known variously as alternative access, reservations, position action, race conscious selection and admissions process, a remedy and positive discrimination as well as reverse discrimination in many other nations, through empirical, interdisciplinary and applied psychological research and legislative constructs (Ikpeze, 2011, pp. 163-164).

1.2 Ghana's Experience with Affirmative Action Law

In Africa, the wave of Affirmative Action programs has just officially started in Ghana, upon the signing into law of the Affirmative Action Act by the President. In some other nations in Africa, they have already been living with such a law since 1998 in the case of South Africa, under the Employment Equality Act, (Act 55), barely four years after the end of Apartheid regime. There are significant number of studies that have provided data to the assertion that, Affirmative Action policy or program undermines or produces mixed results on productivity in South Africa. That is to say, the net effect of Affirmative Action program is too insignificant to be measurable. Some also believe that Affirmative Action has had negative effect on society by encouraging individuals to seek preferential treatment instead of working hard to succeed on their own, whiles others believe it has caused gender and race relations to deteriorate, and find Affirmative Action law unfair to those who did not deserve the privilege (CRISE, 2010; Klasen & Minasyan, 2017; Miller, 2022). As a general matter, the sense of entitlement that Affirmative Action program has produced in some minorities, women and gay people in nations like the United States, has been a cause of great public concern. There are opposing positive views about Affirmative Action program. "Minorities who benefit from Affirmative Action often have weaker credentials, but there is fairly little solid evidence that their labor market performance is weaker. While minority students admitted to universities under Affirmative Action have weaker grades, and higher dropout rate than their white counterparts, both their graduation rates and later salaries seem to rise as a result of these policies" (Hozer, 2007, pp. 41-43).

1.3 Nigeria, Ethiopia and Kenya's Experience with Affirmative Action Law

The 1999 Constitution of the Federal Republic of Nigeria, Section 42 provided both abstract and substantive provisions for Affirmation Action in that nation, although some critics say, the

provision did not cater for the rights of women, but based on international conventions including the Convention on Elimination of All Forms of Discrimination Against Women (Ikpeze, 2011, pp. 163-164). The constitutional basis of Affirmative Action implementation in Nigeria is similar or the same as what pertains in Kenya, under the Kenyan Constitution of 2010, Article 27, 81, and a few other African nations, with Kenya implementing the Two-Thirds Gender Rule with an appreciable degree of inconsistencies and public disaffection (Kaimenyi, Kinya & Samwet, 2013, pp. 91-94). The introduction of the two-thirds gender rule in Kenya in 2010, has improved the flourishing of women and given them greater representation but it has not led to greater productivity in industry, or a more efficient and less corrupt government machinery. In the Parliamentary sphere, the Parliament of Kenya extended the two-thirds engagement of women in Parliament to 2020, even though the Supreme Court of Kenya had ruled that it be implemented in 2015 (Okoth, 2017, para. 1-8). Today, Kenya has still not achieved the two-thirds rule, according to Kaimenyi et al. (2013). This was followed by the National Assembly's promised in 2023 that it would work to achieve the two-thirds rule (Parliament of Kenya, 2023).

Ethiopia's 1987 Constitution provides for Affirmative Action like the rest of the nations' whose Affirmative Action programs are based on constitutional rather than legislative provisions, which specifically address the issue of gender equity. The lack of specific legislation for Affirmative Action mainstreaming in many of the nations in Africa is problematic in many respects, including resistance and confusion towards the practice. It also reflects official lukewarm attitude towards Affirmative Action as a mandatory policy. This does not mean to suggests that, for example, Ethiopia which has the highest number of women in cabinet and parliamentary positions does not support the broad concept or goals of Affirmative Action. As of 2022, Ethiopia boasted of 40.9% of women in cabinet jobs.

1.4 Potential Delays in Implementing Affirmative Action Law

Delays in implementation the mandate in the Affirmative Action Act in the case of Kenya, is evidence of the societal rejection of the compulsion under which the government has pushed the program on the public and without prior consultation with the public (Kaimenyi, Kinya & Samwel, 2013). Such realist approach of introducing new legislation in a community, may appear effective at first glance, due to the structural existence of the legislation, offices and competent public officials appointed to implement the new rule. In the long run, however, legislation does not change the heart and minds of people, but persuasion, association, collaboration and compromise between the key actors to that legislative goal or policy tend to be more successful in changing minds than compulsion and imposition of order or presidential fiat. Some in the public space, see Affirmative Action program for women to be another name, a ruse for feminism which is presumed to be a disguised label for lesbians in Africa (Ehiakhamen, 2011; Horn, 2023; Currier & Migraine-George, 2016).

Although the general perception of Affirmative Action program is negative, as part of the goals of Affirmative Action law, in this regard, Ghana's Affirmative Action Act, is a step ahead of its comparator nations in Africa due to its unique features with quotas established by the Act with time lines as indicated in Table #1, Progress Achievement Scale, 2024. It is more or less, similar to the 1970 Order No. 4 of President Richard Nixon directing for specific goals and time tables to correct the underutilization of minorities in federal contracts. The difference with the US approach of making Affirmative Action program pre-existing conditionality for access to federal contracts is that, Ghana's Affirmative Action program is being compelled on public institutions because the government sees itself as the biggest employer in Ghana and the biggest grantor of public procurement opportunities, although the nation's Affirmative Action program has not as yet been anchored or coupled to access to government contract. No matter the quantum of contracts available under the government of Ghana, it cannot be compared to the huge size of government contracts under the Federal government of the United States with its humongous federal budget running into trillions of dollars, whilst Ghana's national budget runs only in billions of dollars. At any rate, instead of passing the Affirmative Action Act, Ghana too could have simply relied on its constitutional provisions and lay claim to the human rights protection contained in the 1992 Constitution as sufficient basis for its Affirmative Action legislation. It chose to pass a specific Act of Parliament to address the perceived issues of gender equity in a more focused manner, unlike Ethiopia and other nations like Nigeria and Kenya as discussed in this work.

1.5 Spikes and Waves of Affirmative Action Programs in Other Jurisdictions

Despite the apparent progressive legal move made by Ghana with the Affirmative Action Act, the nation is still in its First Wave of the program which started nine years ago to 2024, (circa:

2015-2024). The "Establishment Act" for Affirmative Action is not the sole mechanism for the implementation of the Act, though it has laid the ground work for the structural design of the program and suggested the values that the potential Legislative Instrument, the Act's Standard Operating Procedure, should contain, for example. That is to say, the establishment Act will lead to the opening of office, appointment of head of the office, with directing staff to spearhead the running of the program so as to achieve the goals set in the seven Schedules to the Act. Critical to these developments, is the drafting and curing of a Legislative Instrument, (L.I). As it is like an Executive Order, Legislative Instrument, (L.I) appears to have more legal weight than an Executive Instrument or Order, due to its legislative character and curative approach under Ghanaian jurisprudence. Perhaps, the launching of the Legislative Instrument to the Affirmative Action Act of Ghana will mark the beginning of the Second phase or Wave of the program. In the case of the United States, the ebb and flow of public controversy over Affirmative Action can be pictured as three spikes in a line, with the First Spike representing a period of passionate debate that began around 1972 and tapered off after 1980. Most nations with Affirmative Action legislations have also experienced certain ebb and flow of waves. In the U.S in particular, the Second wave indicated a resurgence of debate and court cases in the 1990s, leading up to the Supreme Court's decisions in two precedential cases of *Regents of University of California v. Bakke, 438 U.S. 265 (1978)* in which the Court held that specific racial quotas such as 16 out of 100 seats set aside for minority students by the University of California at Davis, School of Medicine, were impermissible. Later on, the Second Spike was marked by additional public controversies, culminating in *Grutter v. Bollinger, 539 U.S. 306 (2003).* In this case, the Court held that admissions process that favored underrepresented minority groups did not violate the 14^{th} Amendment's Equal Protection Clause, in as long as the admission process took into consideration other antecedents of the applicant and thus affirming parts of Regents v. Bakke (1978). Another landmark case upheld certain kinds of Affirmative Action in higher education in *Bostock v. Clayton County, 590 U.S. 664 (2020).* The Court held that Title VII of the Civil Rights Act of 1964 protected everyone against discrimination based on sexuality or gender identity. That is to say that the Title VII protections covered both white and black applicants against discrimination. The Third Spike reflects the Supreme Court decision in 2023 voiding race-conscious-programs at Harvard University and the University of North Carolina, potentially opening a new era of conflicts by abolishing Affirmative Action program in the United States university admissions in *Students for Fair Admissions, Inc. (SFFA) v. President & Fellows of Harvard College (Harvard) and SFFA v. University of North Carolina (UNC), Nos. 20-1199 & 21-707 (2023).* The SEFA decision connects to the age-old decision abolishing separate but equal education programs that favored white schools and for that reason did not want blacks to attend white schools, whose budgetary allocations and resources were below those of the white schools in the United States. *Brown v. Board of Education, 347 U.S. 483 (1954)* opened the door to admit blacks in white schools and colleges (Stanford Encyclic. 2001, 2024).

Perhaps, the Second Wave's narrative on Affirmative Action in Ghana has just started due to the implementation of the strictures contained in the Schedules annexed in the Act. The rest of the discussion would delve into the historical, sociological and political motivations behind Affirmative Action programs and the structural challenges likely to be met, in the case of Ghana, during the implementation phase of the program, due to the general perception that the program is literally being pushed down the throat of Ghanaian men. It is also seen as a unilateral attack on male masculinity and the inevitability of patriarchy in society, given the shelf life of the Affirmative Action Act earmarked to last for about twenty-five years? For the purposes of this paper, and from ethnographical study approach with the author as observer-participant, "masculinity generally refers to the age old acquisition of defensive, and perhaps, aggressive survival skills, be it physical and behavioral traits developed by men that seeks to dominate men's immediate surrounding, be it ecology, fauna, flora, people or women and children, not merely for power and control or the expression of patriarchal privileges; but also, for the protection and provision of goods for the larger family, the maintenance of law and order, and harmony within the immediate poly-unit family, the clan and in the broader village community, which has now evolved or grown into nation-state" (Norman, 2024, p. 129).

2 Methods

2.1 Procedural Approach to Literature and Legislative Review

The author assessed both the human rights, constitutional and procedural approaches to the topic, bearing in mind normative values embedded in gender equity within the broader view of human flourishing and functioning. The content analysis focused on the various legislation, public

policies, case law on Affirmative Action program's implementation, challenges and opportunities. The data set collated and disaggregated through the analysis was executed based on the author's skills and abilities in both analytical and empirical research, feminine gender and masculine gender studies, human rights, the inviolability of the substantive rights under Ghana's constitutional law vis-à-vis international best practice in positive discrimination for the purposes of achieving gender equity, equality and egality. Altogether, 77 pertinent publications in law and policies from Nigeria, Kenya, Ethiopia, South Africa and the United States of America as well as case-law, were reviewed for this paper spread among the major themes of Affirmative Action Act; Gender based discrimination; Gender Parity; Gender Equity and Equality; Feminism; and Masculinism. The snowball effect was relied on in the search for appropriate literature, starting with the key paper, and searching the reference list to locate more relevant papers. Inclusion of a paper in this list was whether it addressed any of the themes. Search engines used were ResearchGate, Google Scholar as well as data bases such as Springer, Science Direct, Scopus, Law Journals, and Law Reporters such as Lexis Journals on Affirmative Action cases, Human Rights and Violence. To identify appropriate literature, different permutations were used in the search, which included "links between affirmative action and productivity"; "European Identity Politics and Affirmative Action", "Feminism and Affirmative Action", "Masculinity, Affirmative Action and African culture", were found in blogs, news files, reports, scholarly papers and government grey papers. Most of the results produced by the search on the World Wide Web directly related or addressed the topic or sub-themes of the topic.

3 Research Outcome

3.1 Historical, Sociological and Political Basis of Affirmative Action Programs

Affirmative Action programs in many of the nations in Africa that have passed legislations to this effect, have done so with no cogent historical basis other than the appeasement of the international community that Africa too is an enabling space for women. Whereas Affirmative Action in South Africa makes a great deal of legal, historical and cultural sense, due to the history of apartheid political regime, it appears, in other nations, the adoption of the Affirmative Action legislation or policy is being compelled on the population with no historical basis. In addressing the observed and documented disparities between men and women in Africa, perhaps, the approach would have been better received by the population, through negotiation that, there ought to be proportionate representation of all sexes and ethnicities in social activities and opportunities, and supported by prolonged public education. Men are not to be blamed for the disparities between the sexes, but rather the system. The reasons for the lack of public engagement, persuasion and negotiations on the implementation of the Affirmative Action program in some African nations is that, male masculinity or patriarchy is not the root cause of gender imbalance in Africa as a whole. The root cause of gender imbalances in African nations lies in identity politics. "Identity politics appear to promote false consciousness: since it takes a bifocal approach to social justice through claims of either redistribution of wealth or income as part and parcel of an outdated approach to problem solving (Fraser, 1996, p. 3-4, In Norman, 2023, p. 56). Affirmative Action program is also about the redistribution of income and wealth.

> "In Ghana, partisan political identities are not invoked against migrants or immigrants, whether legal or illegal [...] nor are they invoked against those perceived to be sabotaging the fortunes of the nation. Partisan politics in Ghana is invoked intra- and inter-political parties as well as intra- and inter-ethnic, (and gender) identity against members of the same or other tribes or ethnic group (or gender) that may have helped to create negative narrative for the members of the political party in power [...]" (Norman, 2023, pp. 61-62).

The rollout of Affirmative Action program in Ghana is definitely going to be subjected to the kind of identity politics prevalent in Ghana, where government appointees and technocrats presumed to be members of the opposition political party are laid off, sacked or even posted to remote work stations for the mere fact that, their political party no longer has the reins of government or power. Such measures do not take into consideration the gender of the persons negatively affected. Considering the nature of the practice of politics in Ghana with the "Winner-takes-All" syndrome, it was probably ill-placed to have passed the Affirmative Action Act of 2024 with specific number of women to be hired and maintained in the enumerated sectors of the economy. Without the intervention of patrimonialism and neo-patrimonialism in the normal functioning of society, women appear to be in position to compete fairly on their own, and even

possibly gain preeminent positions in many of these nations sooner than it was expected, perhaps, ten years ago. Affirmative Action program is therefore not designed to control Executive excess in neo-patrimonialism when it comes to the wealth creation and income re-distribution. Affirmative Action program appears as "[. . .] economic egalitarianism to assure justice for women as part and parcel of an outdated materialism that can neither articulate nor challenge key experiences of injustice" (Fraser, 1996, pp. 4-6, In Norman, 2017, pp. 3-4; Norman, 2024, pp. 82-83). The modern application of neo-patrimonialism has deviated from Max Weber's original design of the concept which addressed the flip side of the relationship between the ruler and the ruled and how the dynamic was to be managed, among other things, bureaucratic efficiency, meritocracy and fair distribution of the wealth of the State. In Africa's unique political economy, neo-patrimonialism has come to relate to a situation where the ruler or authority holders use state resources as if those were his or his group's private property to gain the loyalty and support of his supporters. It is about patronage, clientelism and nepotism (Weber, 1964; Weingrod, 1969; Eisenstadt, 1973; Bratton et al., 1994, 1997).

3.2 Progressive Flourishing of Women without Affirmative Action Program

Women on their own are not doing badly in all spheres of life in terms of laying the foundation for their flourishing and autonomy. Statistically, there are more women enrolled in universities in many nations than men. In many African nations, women are the majority. In the USA for example, "nationwide, women comprised 58% of all college students in 2020, up from 56.6% six years earlier. Women have outnumbered men among college students for decades, but the gap continues to widen." [. . .] "Nationally, in the US, the six-year graduation rate in 2022 was 64.9%. The graduation rate for women was more than 6 percentage points higher than for men, 61.3%. This data was based on six-year graduation rates and for full time, degree granting four-year institutions in the fall of 2016" in the United States (Nietzel, 2024, para. 1-4). Although Ghana lags behind industrialized nation like the United States in terms of female enrollment in universities, the outcome so far is encouraging. In Ghana in 2018, 61% of public university students were male and 39% were female. In private universities, the males were 57% and the females were 43%. This disparity runs through all tertiary educational institutions in Ghana including Technical Universities, Teacher Training Universities, Nursing, Medicine and just about every social educational endeavor except Seamstress-Tailoring and Fashion training centers. Although more or a higher percentage of females complete Primary schools with 73% for female completion rate and 69% for males, with another 50% females at the Lower Secondary School level compared to males with 45%, at the Upper Secondary educational levels, only 9% of females graduate compared to 12% of males as of 2022 (Sasu, 2024).

As a logical argument, Affirmative Action appears to negate the competitive aspects of women and feminism and the belief that whatever men can do, women may even do it better? With all intents and purposes, and despite the charitable embrace of Affirmative Action laws by some, it has the tendency to emasculate certain classes of women, although some recipients of the benefits from Affirmative Action university education have consistently denied the limiting effect of Affirmative Action on their scholastic achievements and their sense of self-worth even if they were admitted on the basis of race-conscious discriminatory programs into their various fields of study in so-called prestigious universities. The ultimate question is, what contributions do these Affirmative Action beneficiaries really make to their respective societies compared to similar cohort of women or minorities in the same nation but who are not beneficiaries of Affirmative Action programs make to the overall economy, academic performance and the overall welfare of the society? Perhaps, the experiences by those in education who were admitted into their various universities' programs on race conscious basis, feel vindicated and validated as being equal to everyone else, after repeatedly passing term papers, quizzes and even producing independent research papers in competitive classroom environments. There does not appear to be the overwhelming evidence to support the expected gains at the commencement of the Affirmative Action programs that, it would enhance diversity, social inclusion and general improvement to interpersonal relationships. Issues like cross-ethnic dating, other kinds of relationships, or the perception that there is observed improvements in interpersonal relationships in many nations may not be attributable to affirmation action but to the open spaces granted to humanity through social media platforms. Discrimination in job placement based on race, sex and national origin or ethnicity continues to rear its head in just about every nation with Affirmative Action legislation, since hate, discrimination and the practice of social exclusion cannot totally be legislated out of humanity (Ikpeze, 2002; Crosby et al., 2006; Tsikata, 2009; Tierney, 2007; Kaimenyi et al., 2013; UNC, 2023).

3.3 African Male Masculinity and Affirmative Action Program

Although some Ghanaians are happy about the passage into law of the Affirmative Action Act 1121 of 2024, those elements have failed to appreciate the essential qualities of African collective male culture with respect to masculinity. African masculinity is the manifestation of patriarchy in Africa. Steven Goldberg's book *The Inevitability of Patriarchy, (1973)* provides additional substance to the inevitability of masculinity in Africa. This paper is not about justification for African masculinity but an explanation of why it should not be used as the basis for enacting legislative Acts to punish men for being what nature ordained them, and how society nurtured them to be: Men. The National Democratic Institute of USA defines masculinity in their online magazine, *Men Power & Politics* as referring to the "roles, behaviors and attributes that are considered appropriate for boys and men in a given society". "Masculinity is constructed and defined socially, historically, and politically, rather than being biologically driven". [. . .] "Women as well as men are involved in reinforcing these social expectations of masculinity" (NDI, 2024, pp. 1-2). Baker & Hotek (2011) looked at the various dimensions of masculinity starting with hegemonic masculinity as discussed by Connell (1995) and others that, hegemonic masculinity "is a termed used in the social sciences and humanities to explain "the prevalence and tenacity of men's gender dominance" (ibid, p. 49). Furthermore, Connell offered that "hegemonic masculinity is tied to the structures of power and refers to 'the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy', which guarantees the dominant position of men and the subordination of women" (Connell, 1995, p. 77; In Baker & Hotek, 2011, p. 49). Western researchers or writers are exceedingly benevolent towards the African male masculinity; bothering on paternalistic apologia, in the apportionment of blame assignment with regards to female domination in Africa, even though they place the blame squarely where it belongs when these same researchers discuss or write about male domination of women in the Western world (Bertolt, 2018; Hakim, 2004, 2015; Goldberg, 1993; In Norman, 2025). The unintended outcome of such justification for this practice, perhaps, could be either to reduce the African male into powerless status. Or, ignore the role of the African male in the history of the world, so that only the Western male could be credited with rationality, functioning and capabilities until Europeans arrived in Africa. If so, that would be nothing short of subterfuge, deception and inconsistent with cross-cultural articulation of gender rights (Nussbaum, 1999). African societies take their humble beginnings from the Hobbesian state of nature, where each man was an island unto himself, coupled with interpersonal mistrust, competition and appreciable degree of chaos. As it is today, it appears Africans have always had zero tolerance of trust for each other, which may explain why the colonials were able to exploit this moral vulnerability and divided them and conquered Africa? The earlier African societies were thus formulated on the display of brutish force against intruders and the capture of the benevolence of power and family. In the beginning, there was personal autonomy, freedom and choice to do whatever each pleased without any mitigating force to stop the person as envisaged by Hobbes.

Interestingly, if humanity evolved out of Africa, then migrated to Asia some 2 million years ago, entering Europe in some 1.5 million years ago, then the people of the African continent may have experienced Hobbesian nature of existence through evolution, traveled and sojourned in hostile environments. As a result, the men will somehow exhibit brutish tendencies and lifestyle as well as experience Locke's *State of Nature* in forming communities for self-preservation. Connell (1987) reported that, "the concept of masculinity is developed by society and this concept is dependent on the historical time, culture" (Jabeen, 2018, p. 1). Jabeen expanded the quote from Connell that "the construction of masculinity often sets up men according to their nature of work, organization policies" (ibid, p. 1). That is to say, "traditional masculinity", (the type practiced in Africa), "men should be strong, aggressive, confident" (ibid, p. 1). These could serve as additional traditional or even innate triggers that suggest that the basic impulses of survival of the fittest in the wild, wide rustic African ecosystem, before the arrival of the white colonials with guns and cannons that could kill many wild animals in a single hunting trip, a feat which the colonialists did, may have necessitated the masculinity of the men in search of food, and the protection of the women in their brood in that social milieu without any prompting from the white inquisitive colonials (Smithsonian, para. 3-4, 2024). Bertolt continued that, "[. . .] European hierarchal structures in the colonies" disrupted "traditional societies", and then inured Africa with "Eurocentric vision, now reproduced by the African patriarchy" appears to be a bit of a stretch (ibid, p. 3). How is that possible? The answer to this apparent preposterous statement is found in Michael Mann's (1986) work, reprinted in (2005), Volume 1, *The Sources of Social Power: A history of power from the beginning to A. D. 1760*. He writes in chapter one that, "True, village heads and chiefs perform useful centralized roles". "If efficient, they can acquire considerable authority". "This occurred all over Africa [. . .]" (ibid, p. 68). The

earlier submission by Bertolt was not only subjective to the reality of the author, but in the general history of Africa, it appears to be of limited utility to understanding patriarchal African nature in totality. Italua-Abumere (2013) defined masculinity as "consisting of those behaviors, languages and practices, existing in specific cultural and organizational locations, which are commonly associated with males and thus culturally defined as not feminine" (ibid, p. 42). Although the concept is relational, Italua-Abumere alleged that "masculinity does not exist except in contrast with 'femininity"' (ibid, p. 42). The assertion that masculinity does not exist except in contrast with femininity is problematic, in that, whether masculinity is constructed on the plane of femininity, it still exists and poses existential threat to not only women but other vulnerable minorities with different sexual orientation. It also independently exists whether in the context of gender or hypermasculine activities against homosexuals, but also in male-to-male situations where there is competition for power and control to establish legitimacy of some men. The sociology of masculinity which concerns the study of men, their behaviors, practices, values and perspectives is not shaped only by feminist theories as alleged by some researchers but also by the prevailing expectations of that society in which the men reside, their subjective aspirations and the consequentialist approaches adopted to attain or achieve their goals and in managing supremacy over their competitors irrespective of gender or sex (Norman, 2025, pp. 80-85).

3.4 The Legal rationale behind the promulgation of Affirmative Action Law in Ghana

There does not appear to be historically documented and overwhelming evidence of discrimination by the alleged immoral masculine and patriarchal Ghanaian men against women in the current or past history of Ghana. What appears to be true to the history of Ghana is that, there have been prolonged periods of official discrimination by government and political leaders against the population inclusive of both men and women, through programs that ultimately deprived the population of their basic needs and flourishing as human beings, such as in the 1980s spate of military takeovers and its economic and social negative deprivations and consequences, and assisted by the World Bank and the International Monetary Fund through the Structural Adjustment Programs (Osei, 1999; Van de Walle, 2001; Sowa, 2002; Ocran, 2005; Ninsin, 2007). The presumption of Affirmative Action legislation in Ghana appears to be based on erroneously imagined narrative, and based on the rationale that the beneficiaries of Affirmative Action have been victimized for a long time in their lives or the lives of others by the previous generation of men and, therefore, demand equality for the past wrongs from the current generation of men to equalize the wrongs of the past and create a sense of balance between the sexes and improve social inclusion. Crosby et al., (2006) define Affirmative Action as a process which "occurs whenever an organization devotes resources (including time and money) to making sure that people are not discriminated against on the basis of their gender or other ethnic group" (ibid, p. 587). This definition from Crosby et al., does not meet fairness or justice assessment, because the main thrust of Affirmative Action is to discriminate on the basis of sex and not gender, as a curative measure against past discrimination and to redistribute the national wealth or access to the highest income. It is agreed that "Affirmative Action has the same goal as equal opportunity but differs from equal opportunity in being proactive" as articulated by Burstein (1994). "Equal opportunity is a passive policy that seeks to ensure that discrimination will not be tolerated once it is detected. In contrast Affirmative Action aims "not only to subvert but also to avert discrimination" before it happens by using discriminatory measures to achieve its aim (Crosby & Cordova, 1996). "The National Council on Women and Development (NCWD), Ghana's then national machinery for women, defined Affirmative Action as "special measures which are taken to correct systematically and institutionally the structural discrimination and collective disadvantages which women suffer as a group" without producing the evidence for such conduct (Tsikata, 2009, p. 13-14). Ghana has been compelled to adopt Affirmative Action law; not because there is evidence-based structurally constructed social and legal discriminatory legislation in favor of men, but because it feels good to the government in power that somehow, appeasing the world community with Affirmative Action law is probably better than not in terms of the promotion of the national image. It is important to keep in mind that the legal construct of Affirmative Action unintended result is the potential infringement on the cultural roles of men and women in domestic life, based on tradition, which has its own jurisprudence separate from judge-made or common law jurisprudence as well as the potential for deeper show of alienation of women from traditional spiritual practices and observances.

The United Nations and other international as well as supranational institutions call for the positive introduction of Affirmative Action programs to equalize past discriminatory practices not only against women but racial minorities, often times, without regard to the unique history of

the nations involved. Whereas the call for Affirmative Action in South Africa, Namibia, Kenya and other Eastern African nations, including Rwanda and Burundi, based on their respective interpersonal and intersectional history and dealings between white and black people or those of different ethnicity, the evidence for past discrimination in nations like Ghana or even Nigeria does not fit too well as it might have fitted the situation in South Africa or Namibia. Article 2(2) of the International Convention on the Elimination of All Forms of Racial Discrimination of the United Nations (CEDAW) requires nations that ratified that treaty to take the necessary actions to eliminate all forms of discrimination against different racial groups. This is because, "the principle of equality sometimes requires State parties to take Affirmative Action in order to diminish or eliminate conditions which cause or help to perpetrate discrimination prohibited by the convention". Whereas Affirmative Action program in the U.S. starting from the 1964, was not only for women empowerment, but rather for racial minorities whether they were black or white, Hispanic or Asians, in Ghana Affirmative Action is for women and not even for tribal minorities. As a sovereign State, Ghana's reliance on international conventions to justify its Affirmative Action program is disturbing, as if Ghana is a Stateless entity looking for validation or legitimacy from the international community. These conventions are captured in various documents of the United Nations, "key among them is the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which was adopted by the General Assembly in 1979 and ratified by Ghana in 1986.

The other international protocol is the Beijing Declaration and Platform for Action (BFA) which was accepted by the Ghana government in 1995. Article 4 of the CEDAW obliges member states of the United Nations to "adopt temporary special measures aimed at accelerating de facto equality between men and women". That is to say, Affirmative Action is not a lifelong commitment of nations but temporary measure to mainstream Affirmative Action by the State for a set period of time, and then leave society to manage the practice once a critical mass of adherents has been created or given birth to. Writing about *Affirmative Action and Prospects for Gender Equality in Ghana's Politics*, Tsikata (2009) took a partisan position on Affirmative Action law as if Ghana has no domestic laws on human rights. Ghana is a dualist legal nation with respect to international law, and that for international law to become part of domestic law, specific action must be taken by the Parliament of Ghana to ratify that piece of international convention into national law. Those requirements under dualism with respect to the incorporation of international law into domestic law has been met by Ghana through its ratification of the CEDAW and related conventions on human rights.

On the strength of these conventions, Tsikata reported that Ghana's legal framework is informed by its international treaty obligations and complying with periodic report filings, and that, "on the basis of these commitments, Ghana recently sent a combined third, fourth and fifth periodic report to the CEDAW Committee. This is not how sovereign nations are supposed to work in the comity of nations or in the international community. The report (submitted by Ghana) was considered at the 741st and 742nd meetings of the Committee on 9th August 2006" (Tsikata, 2009, p. 22). Again, the fact that the report submitted by Ghana was reviewed by its peer in the international community, does not suggest that, somehow, Ghana ought to take any measures to install programs on behalf of any class of people. Such activities are volitional and are not time bound. These reports are part of international best practices under the UN conventions and does not by themselves constitute legal obligation to promulgate Affirmative Action law. Although Article 7 of the Convention provides that state parties (i.e. governments) take all appropriate measures to eliminate discrimination against women in the political and public life of their countries in particular, to ensure that women are on equal terms with men, such as the right to vote, (which the women of Ghana already have) or, to be elected, (which the women of Ghana already do get elected into Parliament and other public political positions, and to participate in the formulation and implementation of government policy, to hold public office and perform all public functions at all levels of government and to participate in nongovernmental organizations and associations concerned with the public and political life of their countries. By the various political parties in government in Ghana, women have played significant roles in education, for example where in the period between 2019 and 2024, women were appointed Vice Chancellors of the University of Ghana, University of Health and Allied Sciences, Kwame Nkrumah University of Science and Technology, and so many other public big universities with large populations of students and related university workers.

Such intrusion into the domestic law and affairs of Ghana should be of concern to every patriotic citizen of Ghana, irrespective of gender. Affirmative Action Act has the tendency to diffuse the focus of Ghana and for the nation to delude itself that, somehow, it is a sophisticated nation. Ghana's patriotism has no relationship to foreign legal framework like the conventions

of the United Nations even if Ghana is a signatory to these conventions. Article 8 of CEDAW provides for equal rights of women to represent their countries at the international level. CEDAW also has specific provisions justifying Affirmative Action. In Article 4 paragraph 1, the Convention provides for the "adoption by state parties of temporary special measures aimed at accelerating de facto equality". Although no specific time limit was set, going by the US example in the case of Harvard and University of North Carolina in 2023, it is likely to presume that Ghana might adopt the 25-year rule as mentioned in that case for the implementation of Affirmative Action law, considering Ghana's penchant for appropriating other nations' jurisprudence considered perhaps superior to that of Ghana's. Whereas the US has a legitimate institutionalized and systematic history of racial discrimination supported by both State law, despite the equal protection clause of the US Constitution or the proclamation of the equality of all men over a long period of time, the alleged discrimination against women in Ghana has not been deliberate or systematically demonstrated.

3.5 Exceptionalism to Women in Ghana's Labor Chores Despite Alleged Mistreatment of Women by Male Patriarchy and Chauvinism

Ghana's culture has granted women exceptionalism and excuse from certain duties and chores much in the same way that men have been excused from certain domestic chores and duties by cultural edict. The division of labor that exists between men and women in Africa cannot be the basis for Affirmative Action Law as a legal punishment against men. Such developments appear to underpin the lackadaisical attitude of the male child from assisting in domestic roles at home, aiming for higher level of responsibility in life and even seeking gainful employment since society appears to have discounted the male child as, perhaps, redundant? The different role assignment incorporated into a benevolent culture such as that of Ghana, with strict job descriptions for men and women, is actually a concept engineered by women and supported by men, as part of the cultural relativist approach to being (Saidi, 2010; Saidi et al., 2021; Hetherington, 1993; Hunt, 1989). In terms of the evidence-based historical outright discrimination against women, it is hard to produce the evidence except anecdotal narratives and, certainly, cases of spousal or interpersonal abuses and poor treatment. The Equal Protection Clause of the 1992 Constitution of Ghana is contained in Article 5, clause 12 (1-2), and in Article 17, clause 1-4 (2). It starts with the all-inclusive beatitude that,

> "All persons shall be equal before the law (17(1). Then 17(2) "A person shall not be discriminated against on grounds of gender, race, color, ethnic origin, religion, creed or social or economic status".

The Constitution was thorough in defining what discrimination means or is:

> "Discrimination means to give different treatment to different persons attributable only or mainly to their respective description by race, place of origin, political opinions, color, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description".

Tsikata probably noticed the double wedged-sword effect of this provision on the content and the operationalization of Affirmative Action law particularly with respect to the issue of discrimination on the basis of gender. To avoid having to explain and justify this provision, particularly since the judiciary may not have addressed this provision from the point of view of jurisprudence or the rendition of judgment on Affirmative Action, which may occur sooner than it is common with public legislations, decided perhaps, to rely on international conventions as a way out to justify Affirmative Action law in the context of Ghana. Reproducing the list of international conventions in the Second Schedule of Act 1121 of 2024 is strange, as if the United Nations runs the core legislative structure of Ghana and an affront to Ghana's sovereignty (ibid, pp. 21-23). Nonetheless, the 1992 Constitution made provisions for this very line of argument in Articles 23 through 27. Specifically, Article 27(3) states that,

> "Women shall be guaranteed equal rights to training and promotion without any impediments from any person".

When one claws back to Article 17(4) that,

> "Nothing in this article shall prevent Parliament from enacting law that are reasonably necessary to provide: (a) For the implementation of policies and programs aimed

> at redressing social, economic or educational imbalance in the Ghanaian society; (b) For making different provision for different communities having regard to their special circumstances not being provision which is inconsistent with the spirit of this constitution".

For these clauses in the 1992 Constitution, there is no legal justification to incorporate those international treaties into the domestic law of Ghana, except if it is designed as a pre-emptive strategy to silence critics and "pure law" adherents? Affirmative Action law is being treated by the 1992 Constitution of Ghana with exceptionalism by providing for the legality of discrimination against men, provided it redresses social, economic or educational imbalance of women in Ghana. In this respect, women appear to constitute a different community from men, although both sexes are part of the gender equation? The law is not as charitable to underclassness of men who are also, like their women counterparts, living on the margins of society and can hardly pull themselves up by their own bootstraps and need government support to be able to enjoy their rights and privileges as free persons. There were as many dissenting voices for the women's (not human) rights approach as there were the many who advocated for a stricter interpretation of the law, using Hans Kelsen's *Pure Theory of Law, (1967)* approach (Vienna School of Legal Jurisprudence) without importing into the review Hugo Grotius's dialects of reason, the rules of jurisprudence or expediency as well as imperatives of morality in relation to the subject matter under legal review (Burris, 1994, p. 272). Though Burries's work was on the conflict between epidemiological disease control approach versus public health approach to disease outbreak, it is probative in this instant. Between the two seemingly dissimilar views, rests the real challenge that to avoid judicial activism, the judiciary has the authority to interpret the law but not to write the law as they wish and therefore do not have the authority to compel their social views on the public (Burris, 1994). The policy development on the rights of women in the Western industrialized nations has gone full circle and back to the starting point of the debate concerning the women's rights and Affirmative Action, considering the 2023 decision of the US Supreme Court on race conscious Harvard and University of North Carolina admissions approach to minorities and women. Social discrimination is a social canker that needs to be eliminated but not through the creation of another layer of discriminatory practices on the basis of sex (not gender) in order to redress past discrimination against women.

In the same part of the constitution, Article 17(5) states that,

> "Nothing shall be taken to be inconsistent with this article which is allowed to be done under any provision of this Chapter".

Chapter 5 of the 1992 Constitution of Ghana with sub-title: *Fundamental Human Rights and Freedoms*, there are obvious inconsistencies to the grant of rights of the people based on gender, but the constitution says despite this clear observation, the inconsistencies should be considered as acceptable anomaly with the eye on the ultimate goal: rationalizing historical discrimination against women, with special legislation to achieve gender equality. To avoid the potential trap of having to interpret the law, Tsikata, perhaps, took the more established, straight forward route of the international conventions of the United Nations as Ghana's justification for Affirmative Action law. If there is any compulsion for the Affirmation Action act, it is rather the 1992 Constitution that, on one hand, promotes the promulgation of Affirmative Action law as a curative measure to heal past discrimination and, on the other hand, prohibits discrimination of any kind to any person. Herein lies the evidence of the sloppy draftsmanship of the national constitution and why many are calling for a constitutional review.

3.6 Evaluation of the Affirmative Action Act of 2024, (Act 1121) and its internal weaknesses

Affirmative Action Act of 2024 appears to be self-executing law due to the activities listed in Schedules One to Seven on: (1) Process for Measuring Progressive Compliance with Targets; (2) International Conventions; (3) Guidelines and Strategies for Gender Equity in relation to the Public Service; (4) Strategies for Gender Equity in relation to the Executive; (5) Strategies for Gender Equity in relation to the Judiciary, (6) Strategies for Gender Equity in relation to Parliament and the Parliamentary Service and finally; (7) Strategies for Gender Equity in relation to Political Parties affixed to the Act. In addition to these specific Schedules, there are other equally forceful Directive Principles, under the "Object of the Act", Section (1) and (2) compelling compliance with the object of the act to specific institutions such as Section 16 (1) to (5) Gender Equity in the Security Services (ibid, p. 10). Such Directive Principles are likely to undermine discipline, quantitative and qualitative intensity of training, particularly with regards to the quantitative expectations of the First Schedule: Process for measuring progressive compliance with targets.

The first item of compliance with the First Schedule is the provision of "baseline information in 2018 to be provided by all organizations and institutions listed in the Act (First Schedule (1)(a), p. 20). The date for the baseline date was selected under a 'veil of ignorance'. That is to say, it was not based on any empirical data informing the appropriateness of the year 2018, and that society is being redesigned from scratch without knowing the etiology or antecedent and demographic facts about a public challenge, for example. Obviously, institutional and systemic discrimination did not start in 2018, if as asserted by the Act, that gender discrimination has been historical and institutional in nature (Rawls, 1971; 2001). Below in Table #1: Progressive Achievement Scale of 2024 provides the expected deliverables by 2034.

Table 1 Progressive Achievement Scale of 2024

From	To	Percentage
2024	2026	30
2027	2028	35
2029	2034	50

The First Schedule (2) demands for annual reports by institutions and organizations indicating compliance with their policies or plans and the Committee may summon an official to clarify issues in the report and make appropriate recommendations and issue compliance certificate. It is for these reasons that I have indicated that Act 1121 of 2024 is self-executing and also ignores procedural requirements of law and legislation making in Ghana: Legislative Instrument.

3.6.1 Act 1121 of 2024 not in Compliance with Statutory Law Provisions

This is because, the Act seeks for the introduction of those listed activities to be implemented in Ghana almost immediately and, without the passage of Legislative Instrument in compliance with Article 11(7) of the 1992 Constitution. Legislative Instrument delineates the modalities for the implementation of an Act of Parliament; and forms part of subsidiary legislation. Section (4) of the Staturoy Instrument Act of 1959, as amended, defines legislative instrument as a statutory instrument declared by the Attorney General to be legislative in character: - if it determines or alters the law, rather than applying it in a particular case, and has direct or indirect effect of affecting privilege or interests, imposing an obligation, creating a right, or varying or removing an obligation or right (Essien, 2024, para. 5) Subsidiary Or Subordinate Legislation, Researching Ghanaian Law, mylawglobal.org. New York University School of Law). The Affirmative Action Act qualifies as a Statutory Instrument because it directly affects male privilege and interests, imposes legal obligation, creates rights for women, varies obligations and rights between men and women within the broader intersectionality of social perambulations, and therefore, at least, requires a legislative instrument and to make the Act so simple that everyone can understand it (Crabbe, 1996). By simplicity, Justice V.C.R.A.C. Crabbe meant the public ought to be educated about the Act, and the language has to be understood by the public.

3.6.2 Ghana's History on Gender Equity Demands Gradual introduction of Affirmative Action Act and the programs under it

Ghana has not provided gender inequity claims to support its Affirmative Action program introduction, unlike the historical, social and political basis for Affirmative Action law in the United States of America. The Affirmative Action Act of Ghana is a direct attack on national culture and institutions designed by both women and men, grandmothers and grandfathers subject to gradual modifications in a progressive but innocuous way since time immemorial to the present day. Leaning from the United States of America's experiences and the motivations behind the implementation of its Affirmative Action program, and given the US's history of segregation, discrimination, separate but equal racial doctrine, and so many other race conscious institutional measures designed to give, mostly, the white male population economic, political and social advantage over every other groups in the United States of America, Affirmative Action as an appropriate social change was meant to happen at one time or the other. Like many progressive developments in academic research, conceptual and theoretical formulations in human rights, abortion rights, feminist movement, civil rights and racial equity, Affirmative Action and other extensions such as LGBTQ+ rights, seem to have emerged out of the U.S. intellectuals and scholarship (Ikpeze, 2011, pp. 160 - 161). Affirmative Action was a gradual political action with little or no participation of the majority of the members of the beneficiaries, except, perhaps, their lobbyists and Civil Rights leaders. The difference between that and Ghana government's decision to promulgate the Affirmative Action Act and did it without any laid-out plan for the gradual implementation and adjustments that may become necessary during the implementation phase, leaves much to be desired. The suspected subterfuge in the passing of Act 1121 in the tail end of

2024, an election year, was to ginger support for the political party in power? As can be seen from Table #1 above, the Act demanded for immediate implementation from the year of its passage, and thus saddling the new government with the burden of implementing Act 1121 of 2024.

3.7 Lessons from the United States of America's Affirmative Action Policy: Regulations and Executive Instruments since 1964

The United States of America during the government of Lyndon Johnson, through Executive Order 11246 aimed to operationalize the Civil Rights Act of 1964 and to put an end to racial discrimination, segregation and social exclusion. This was necessitated by the unique historical and the need to cure past mistakes, omissions and commissions of crimes against the concept of equality within the context of American sociological basis of being. It was inspired by their sense of morality, appreciation of the autonomy of others, and the need to provide recompense as a definitive way of demonstrating national contrition for the past institutional crimes against humanity and a show of a nation that is, perhaps, 'born again':- repudiating the gains from slavery, discrimination in favor of the white and masculine population, atonement and appeasement for centuries of human rights abuses, the cleansing of white guilt, and the leveling of social disparities particularly in favor of America's Black population, women and other minorities. Executive Order 11246 was amended in 1965 by Executive Order 11373 to put the goals of Affirmative Action into the taxonomy of the Labor Department as the monitoring and enforcing arm of government. The Order required that all companies, universities and other institutions which do business with the government or receive federal funding, shall not only refrain from racial, sexual or religious discrimination in hiring, promotion and admissions, but also take affirmative steps to ensure that applicants are employed without regard to race, color, religion, ethnicity, sex or national origin. Unlike the situation in the United States of America, Affirmative Action program in Ghana has a limited historical weight, documentation and narrative as well as broad-based application since it focuses only on women, irrespective of whether or not, there are women who are self-actualized, have immense wealth, and have access, compared to some of the men who are living on the margin with no hope of ever getting out of the cycle of abject poverty unlike the Equal Employment programs in the USA (Crosby, et al., 2006, p. 587).

Like many social concepts in the modern age, the U.S. was the first nation to introduce Affirmative Action law as a way of compensating for past blatant and legally constructed discriminatory legislation, social practices of exclusion of Blacks, women and other racial minorities at the community and institutional levels, despite strong public resistance and rejection of the measure. Since its introduction in 1964 in the United States under President Lyndon Johnson, today, Affirmative Action laws are found in Canada, Germany, Denmark, Finland, France, Norway, UK, Romania, South Africa, particularly after the Apartheid Regime, Ghana, Nigeria, Uganda, Kenya, Russia, China, Israel, India, Indonesia, Malaysia, Sri Lanka, Slovakia, Serbia, New Zealand, and in many South American nations. This act helped in no small way to augment the standing position of the United States of America as the nation with far-reaching humanistic intellectualism and philosophical leadership in human rights practices and laws, before the end of cold-war of 1989 and thereafter. The adoption of Affirmative Action programs in all of these nations appear to present the argument that it is received with open arms and with overwhelming support in many nations, but that conclusion would be wrong. In each geographical space where Affirmative Action has been introduced, irrespective of the homogeneity of the population, there have been resistance, sometimes openly and violently and other times, due to the limited freedoms that prevails in some of these nations, such as Kenya, Nigeria or Ethiopia and Ghana, the resistance is subjective and more innocuous. Evidence against Affirmative Action has been found in Germany by Teney et al. (2022), Walker (1996), and in Italy by Belmonte & Lillo (2021) and in Europe by Mohring and Teney (2024) as well as in South Africa, a nation whose economy has been shaped by years of discrimination by Valodia and Ewinyu (2023).

In 1973, Thomas Nagel's paper, *"Equal Treatment and Compensatory Justice*, and Judith Javis Thompson's *Preferential Hiring*, also in 1973, provided the initial basis for ethical analysis of Affirmative Action legislation or policy with the chaotic social environment of the Vietnam War, public demonstrations and protest, the Civil Rights Movement and the social protest as well as the women's liberation movement. As reported by these two authors, all these developments, followed closely in the heels of the Civil Rights Act of 1964, and the Executive Order of 1965 which mandated that, businesses receiving US federal government funds were prohibited from using aptitude test and other criteria that intended to discriminate against African Americans, among other legislative orders. Prior to these legal instruments, in 1961, President John F. Kennedy issued Executive Order, (E. O) 1095 used Affirmative Action to instruct federal contractors to take affirmation action to ensure that applicants were treated equally without regard to race, color,

religion, sex or national origin, prior to the coming into force of the Civil Rights Act of 1964. These two legal instruments combined to outlaw discrimination based on race, color, religion, sex or national origin, but encouraged "positive discrimination". Positive discrimination is the hiring of, or taking, admitting more candidates from ethnic minorities to boost diversity, over a more qualified non-BAME employee or candidate. Non-BAME refers to those who are not Black, Asian, and Minority Ethnic group, as harmonized by the UK government statistical service. Ethnic minorities include in nations like the United Kingdom, white minorities such as Gypsy, Roma, and Irish Traveler groups. In the United States of America, indigenous population or aborigines in Australia would fall under BAME (Cabinet Office: Race Disparity Unit, 2024, para. 1-3). The suspicion in the United States that Affirmative Action Law meant promoting underqualified persons of color or women to managerial positions over and above the qualified and more experienced and older employee was not just a passing comment. Despite these valid concerns, the history of the United States with racial discrimination and gender exclusion from many social functions, emboldened and justified the introduction of the Affirmative Action program. For these reasons, and continuing with what President John F. Kennedy had achieved so far before his assassination, in 1965, President Lyndon B. Johnson issued Executive Order (E.O) 11246 requiring Federal Contractors and Subcontractors to take Affirmative Action measures to expand job opportunities for minorities and established the Office of Federal Contract Compliance, (OFCC) in the Department of Labor. In 1966, the Equal Employment Opportunity Commission, (EEOC) promulgated regulations that required employers with at least 100 employees or government contractors with 50 employees to fill out the EEO-1 Private Sector Report annually under regulation 29. C. F. R. Sectionm1602.7. In 1967, President Johnson amended E.O 11246 to include Affirmative Action for women and in 1970, the President Richard Nixon issued Order No. 4 authorizing flexible goals and time tables to correct "underutilization" of minorities by Federal Contractors. Order No. 4 was revised in 1971 to include women. Such modifications and amended for the implementation of the Affirmative Action legislation and regulations continued through the 1970s. The pertinent question from this historical example from the United States, is the government of Ghana also going to require private companies doing business with the government, those seeking one-time contracts for road or infrastructure construction, and other services to comply with Affirmative Action law and if so, where are the modalities, without a Legislative Instrument or Executive Instrument to achieve this goal, if any?

3.8 Potential Pitfalls and Administrative Sabotage of the Program in Ghana

There has been little or no public education about the Affirmative Action Act in Ghana. It is erroneous to presume that, due to a person's educational level, that person knows the law and understands the law. In my quantitative paper on the subject, *"Access, Knowledge and Application of Public Health Law: A case study of Awareness of Lawyers, Medical Doctors and Nurses of Ghana's Legal Framework on Public Health, (2014)"*, I speculated that "awareness of public health law was dependent on prior training in public health law or medical ethics. Although there was significantly weak correlation of about 19.6% ($p < 0.05$) between highest education attained and the previous study of public health, there was about 57.5% correlation between previous study of public health law and whether respondents had a general idea of what public health law ought to be. This outcome was highly significant at 0.01% ($p < 0.001$)" (Norman, 2014, p. 141). Perhaps, due to the gradual implementation through executive orders the US adopted, the implementation of Affirmative Action program became a bit more efficient and effective within the shortest possible time to get program mainstreamed in the United States. In Ghana, the passage of the Bill into law alone, took some nine years with schedule of activities which are still opaque to the broader business and employment centers. The way new legal requirements are implemented in Ghana, suggests that the implementation of the Affirmative Action Act may face serious institutional reluctance and legal challenges, due to the lack of planning, execution and application of the instrument to the issues the law is supposed to correct. Crosby et al. (2006) offered that critics of affirmation action sometimes worry that "it is medicine that harms its patients", because [. . .] "it undermines its intended beneficiaries by promoting the stereotype that those who benefit from the policy could not succeed on their own", citing Sowell (2004) and Zelnick (1996) for support. Part of this perception stems from the fact that ego or feelings of self-esteem stems from the esteem of others. Crosby (2004) has already contributed that, "when a person knows she is qualified to do work, the undermining effect of 'Affirmative Action privilege' evaporates" (Crosby et al., 2006, 593). In the situation of Ghana, the debate leading to the nine years of preparing the Bill into law, appears to have allowed a lot of pent-up anger and resentment to pile up on one side and on the other side, it seems to have softened the resistance of some of the political critics and opponents against the Act, once it was passed and assented

into law. "Research suggests that having an Affirmative Action law or policy in place is not always sufficient to help organizations and universities achieve their goals of diversity and merit. Poorly constructed Affirmative Action programs can cause real harm. Paying attention to proper implementation is important for a number of reasons (Konrad & Linnehan, 1995; In Crosby et al., 2006, p. 594).

4 Discussion and Conclusion

For the Affirmative Action program in Ghana to work seamlessly, and without sabotage by the public, there has to be prolonged public education from the highest public employees to the lowest in society, taking into consideration the whole of society approach. The Affirmative Action program is likely to see a few successes in the political spaces due to the general attention the public pays to that cohort of public servants. In the Security Services, unless acute attention is paid to the modalities of implementing the Affirmative Action program, it is likely to see less than satisfactory result due to the hierarchical nature of the system which is similar in reality with patriarchal modalities and social controls and the hand of government in promotions and appointments (Aboagye, 2025). Additionally, due to the differential strength of women and men, the preponderance of staff assessment for combat readiness falls with the males, a situation which has the tendency to deny progressive rank elevation and participation in decision-making at the highest levels of military organization. The gains already made in the educational sector may convince the public of progress being made, but the qualitative assessment of the achievements at the educational front would be helpful in isolating wicked problems inherent in the educational sector. All in all, the time table given to the Affirmative Action program in Schedules One through Seven, does not provide enough impetus to private businesses and corporations of the need to adopt the Affirmative Action law into the respective corporate standard operating procedures. This gap has come about due to the burden the law places on such entities to devote time and resources to the beneficiaries of the program, with incentives to the companies. It is also because of the exclusionary nature of the program with respect to the interests and protections of women against the interests of men. There does not seem to be any need for Affirmative Action Law in Ghana, designed to punish men, emasculate some of them and arouse male guilt and anger, provided the politicians, the Presidents, the Chief Executive Officers and the Commanding Officers in the various security agencies, would pursue meritocracy, discard neo-patrimonialism and identity politics in job placement, promotions and other related opportunities and pursue justice as fairness as the overarching principle in all societal engagements. Singapore has avoided affirmative action program because it has built into its national standard operating procedures, meritocracy and reward-based performance metrics, which is not justified by sex organ attribution. "Meritocracy is a fundamental principle of governance in Singapore, but this does not equate to a race-blind approach to policymaking" (Mathews, 2017, pp. 1-4). Ghana may do better opting for a more transparent, non-discriminatory system based on meritocracy and allowing total human flourishing without interferences from the executive, protocol placement or law makers out of guilt of neglecting to create a more open society. The men of Ghana have had enough of discrimination already.

Conflicts of interest

The author declares there is no conflict of interest.

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