



ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW
GRADUATES PROGRAM

**“ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES IN ETHIOPIA: THE
IMPLEMENTATION OF THE UN CONVENTION ON THE RIGHTS OF PERSONS
WITH DISABILITIES”**

A thesis submitted in partial fulfilment of the requirements for the degree of Master of
Laws (LL.M) in Human rights law

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July, 2023

Addis Ababa

APPROVAL SHEET

ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
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July, 2023

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DECLARATION

I, the undersigned, hereby declare that this thesis is my own work, has not been presented for any other degree and that all sources that I have used or quoted have been indicated and acknowledged by means of complete references.

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LIST OF ABBREVIATIONS

UNCRPD – United Nations Convention on the Rights of Persons with Disabilities

PWDs/PWD - Persons with Disabilities

CDP- Comprehensive Disability Proclamation

CSP-Civil Societies Proclamation

CPC- Ethiopian Civil Procedure Code

Crim. Pro. C. –Ethiopian Criminal Procedure Code

UDHR-Universal Declaration of Human Rights

ICCPR-International Covenant on Civil and Political Rights

CWDs- Children with Disabilities

FDRE-Federal Democratic Republic of Ethiopia

FAPP-Federal Administrative Procedure Proclamation

FFIC-Federal First Instance Court

FHC-Federal High Court

FSC-Federal Supreme Court

FCP-Federal Courts Proclamation

OPD/DPO-Organization of persons with disabilities

NGOs-Non Governmental Organizations

EHRC- Ethiopian Human Rights Commission

MOLSA- Ministry of Labor and Social Affairs

ECDD- Ethiopian Center for Disability and Development

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ABSTRACT

The Convention on the Rights of Persons with Disabilities (CRPD) is one of specific promising international human right treaty to protect the rights and dignity of persons with disabilities. Despite that Ethiopia is a signatory country and ratified by the parliament, there are visible challenges in respect of achieving the goal of the treaty. The research therefore, stresses on assessment of access to justice for persons with disabilities in Ethiopia; in light with the UN convention on the rights of persons with disabilities. To accomplish the study, the researcher adopts doctrinal research method, consequently; books, journal article, comments, dead files (cases) reports and other documents have been extensively consulted.

The research finding reveals that, implementation of PWD's right to access justice is not realized enough when we evaluate the practice with the standards of the united nation convention on the right of persons with disabilities. They experience serious problems in accessibility of the buildings of hosting courts,; lack of accessible information, delay of proceeding, gaps in free legal aid ,lack of legal awareness for justice organs on PWD right to accommodate them , financial problem. The attention paid in general is very low.

Therefore, in cooperation with other shareholders the state must properly fulfill its duties to ensure that PWDs have the right to access justice. In addition justice organs mainly have to implement domestic laws in harmonization with the ratified and signed united nation convention on the right of persons with disabilities.

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

An estimated 1.3 billion people – or 16% of the global population – experience a significant disability today.¹ Studies reveal that persons with disabilities face disproportionate socio-economic marginalization, resulting in poorer health and medical treatment, lower quality of education, limited employment prospects and generally broad-ranging restrictions on their community participation. These negative outcomes are exacerbated by barriers to access to justice specifically experienced by persons with disabilities.² Hence, access to justice, as a fundamental right in itself and as a precondition of the enjoyment of other rights, is especially crucial for this category of vulnerable persons, and provides a unique tool to counter the discrimination (and often disrespect, lack of dignity or even violence) that they face.³

This is particularly true for persons with disabilities (PWDs) who are frequently denied access to public services like the justice system and continue to live in relative poverty despite being largely excluded from their communities, it is impossible to overstate how important access to justice is as a tool for safe guarding the human right of persons with disabilities (PWDs).

Paradoxically, however, PWD who need effective access to justice most are the ones most frequently encountering barriers to it.⁴ In this regard, international law establishes a comprehensive set of rights and minimum guarantees that are specifically tailored to the needs and conditions of persons with disabilities. These are set out in the CRPD. Article 1 of the CRPD defines; “*Persons with disabilities “as including: “those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”*”

¹WHO; Disability Key facts; December 2022; available at <https://www.who.int/news-room/factsheets/detail/disability-and-health>; last accessed on February 20,2023)

²J Beqiraj, L McNamara and V Wicks, Access to justice for persons with disabilities: From international principles to practice, International Bar Association, October 2017.p.10

³Ibid,p.5

⁴ Ibid

The CRPD clearly establishes that actual access to justice is important for persons with disabilities and stipulates that states must ‘ensure effective access to justice for persons with disabilities on an equal basis with others’.⁵The CRPD is very broadly accepted, which demonstrates the global commitment to empowering individuals with disabilities. ⁶As of October 2021, 184 States are party to the Convention on the Rights of Persons with Disabilities.⁷

Besides, the right of peoples with disabilities to effective and meaningful access to justice in all its stage is strongly supported by international human rights law, not only as a right in itself but also as a means by which PWDs can actually exercise their other human rights and fully assume their responsibility as a member of a society.⁸

In this regard, although the CRPD is acknowledged as the first international human right document to contain a substantive right to access justice, the right already existed before the CRPD entered into force in 2008.⁹In international human rights law, the right is usually termed as “*the right to an effective remedy*”.¹⁰It was nevertheless incorporated in to the CRPD as a substantive right because it was a response to the “specific rights experience of persons with disabilities,” i.e., it acknowledged the fact that people with disabilities encounter many obstacles when trying to access the justice system.¹¹

Studies in this area also show the it can be a challenging to define precisely such a broad concept as “access to justice” in general, it means that everyone should have access to a quicker and simpler method of seeking redress for wrongs done to them and disputes they may have.¹² Access to justice is also considered as much more than improving an individual’s access to

⁵J Beqiraj, L McNamara and V Wicks (n1) p.10

⁶Ibid

⁷Committee on the Rights of Persons with Disabilities; International Justice Resource Centre; available at <https://ijrcenter.org/un-treaty-bodies/committee-on-the-rights-of-persons-with-disabilities/> last accessed on February 20,2023

⁸Halima DomaKutigi, Suleiman ChuksOkoronkwo and Rilwanu Suleiman,(n3),p1-5

⁹Robyn White and DianahMsipa; Implementing article 13 of the Convention on the Rights of Persons with Disabilities in South Africa: Reasonable Accommodations for Persons with Communication Disabilities p.101-102

¹⁰See e.g. International Covenant on Civil and Political Rights, 19 December 1966, art 2(3)(a) (entered into force 23 March 1976)

¹¹Robyn White and DianahMsipa(n8),p.101-102

¹²Pietro S. Toggia (Prof.), Thomas F. Geraghty (Prof.), Kokebe W. Jemaneh; Access to Justice in Ethiopia: Towards an Inventory of Issues; Center for Human Rights Addis Ababa University May 2014;p.1

courts, or providing legal representation. It must be explained in terms of making sure that judicial and legal decisions are fair and just.”¹³

States that ratify the CRPD, which is the first legally binding international instrument specifically tailored to the needs and conditions of persons with disabilities, enter in to several commitments, for instance, to design, develop, modify and implement justice systems that provide equal access to justice for all persons with disabilities, regardless of their roles in the process, in accordance with the CRPD by providing, among others, the necessary substantive, procedural, and age- and gender- appropriate accommodations and support.¹⁴

1.2. Statement of Problem

Based on the world report on disability jointly issued by the World Bank and World Health Organization, there are an estimated 15 million children, adults and elderly persons with disabilities in Ethiopia, representing 17.6 per cent of the population.¹⁵ A vast majority of people with disabilities live in rural areas where access to basic services is limited.¹⁶

Research suggests that Ethiopian criminal justice system does not adequately take into account the needs of people with disabilities. Criminal laws both procedural and substantive, fail short of meeting their unique needs. Furthermore, these substandard laws don't go far enough in addressing the needs of people with disabilities.¹⁷

Additionally, studies shows that prejudice, false beliefs, and stereotypes about people with disabilities (PWDs) as well as a history of oppression due to those disabilities put PWDs at a higher risk of violence. Despite the CRPD's guarantee of the right to access justice, PWDs continue to face challenges. Due to the challenges in the justice system, in particular with the

¹³United Nations Development Program (UNDP), Access to Justice: Practice Note, September 3, 2004, p.6

¹⁴United Nations Human Rights Special Procedures; Special Procedures; ‘International Principles and Guidelines on Access to Justice for Persons with Disabilities’; Geneva, August 2020, p.6)

¹⁵World Bank and World Health Organization: World Report on Disability, Washington, D. C., 2011

¹⁶CARDOS, Research report on the General Conditions of People with Disabilities in Ethiopia, Addis Ababa, (2007)

¹⁷MuraduAbdo; Disability and Access to Criminal Justice System in Ethiopia; Access to justice in Ethiopia: Towards an Inventory of Issues; Centre for Human Rights; Addis Ababa University; May 2014; p.215

police and courts, persons with disabilities who are the victims of crimes such as sexual assault go unattended for an extended period of time, leaving them vulnerable to further abuse.¹⁸

In this regard, the issue of comprehensive legal framework for the proper protection and treatment of persons with disability constructs different point of view between scholars on the area. Moreover, provision of constitution stipulating around person with disability make some part of the community especially the individual's with disability to feel that the attention paid for the realization of rights of disability is too small, it says *progressively*. In turn this low attention affects the right to access to justice in which component of is rarely implemented. There are polemic opinions on littleness of consideration in the entire institutional structure of the country, gaps in budget allocation to government sectors for person with disability, weak infrastructural installation and limited space given in national agenda to those groups. Groups who argue in this way relate the gap with the existence and otherwise of legal framework. It is to mean that; together all the above mentioned concern has implication on access to justice for persons with disabilities. There for, this particular paper will explore access to justice for persons with disability in Ethiopia; the implementation of the United nation convention on the rights of persons with disabilities. Lack of prior identical investigation on the topic on the other hand is another triggering factor. Thus, studies conducted until now as per the researcher knowledge basically concerned about assessing existing laws, access to justice in civil case proceeding, access to justice in criminal proceeding. There is no comprehensive inquiry addressing implementation of laws related to access to justice and its component. It is possible to say that they are not as such comprehensive and not in position to answer question what is the status of implementation of access to justice for persons with disabilities in Ethiopia; in relation to the UN convention on the rights of persons with disabilities.

1.3. General Objective of the Study

The general objective of this study is to examine access to justice for persons with disability in Ethiopia; in light with the UN convention on the rights of persons with disabilities.

1.3.1. Specific Objectives

¹⁸Peter Josiah shughuru; 'sexual violence and access to justice for persons with disabilities in Tanzania and South Africa'; LLM thesis submitted in partial fulfillment of the requirements for the master of laws degree (Human rights and Democratization in Africa), Centre for human rights, faculty of law, University of Pretoria;p.2

- To assess adequacy of laws addressing rights of person with disability special emphasis to access to justice.
- To explore the level of access to available remedy in Ethiopia for person with disability.
- To address the status of legal aid opportunities for person with disability who are in need.
- To evaluate status of legal awareness as a component of access to justice for peoples encountered with disability problem
- To examine to what extent laws on right to access (international or national) relevant for PWD implemented.
- Finally, to address mechanisms for implementation and Monitoring Implementation Rights of Person with Disability

1.4. Research Questions

1.4.1. Main Research Question

What is the status of access to justice for persons with disability in Ethiopia; in light with the UN convention on the rights of persons with disabilities?

1.4.2. Specific Research Question

1. What are the laws addressing rights of person with disability special emphasis to access to justice?
2. What is the level of access to fair trial in Ethiopia for person with disability?
3. What is the status of legal aid opportunities for person with disability who is in need?
4. In what way is the standing of legal cognizance for peoples with disability?
5. Are there any mechanisms for implementation and monitoring implementation Rights of Person with Disability in Ethiopia?

1.5. Significance of the Study

This research is important and different in its kind as it mainly focuses on analyzing the relevant legal framework and assessing measures taken for the implementation of the right of access to justice for PWD in Ethiopia as enshrined in the CRPD. Specifically:

- This research can play an informative to the general reader on the status right to access to justice for people with disability, the laws that are governing, and drawbacks.

- It can be used as input for researchers on the area for further investigation.
- It may help law maker to look in to the adequacy or other wise of existing laws on the treatment and protection of person's with disability.
- Government officials, agencies, and justice actors in all hierarchy can be alarmed of and it may make them to re-consider the attentions they already given to person's with disability.
- It may also be an input for civil society organizations and other non-governmental institutions working on the area to shape their function as per the recommendation and play a significant role what expected from them.

1.6. Research Methodology

1.6.1. Research Design

Doctrinal Legal Research (DLR) is main method used by various areas of legal research and several researchers¹⁹. It encompasses rigorous analysis and creative synthesis of multiple doctrinal strands. This research is basically doctrinal research type which helps to provides answers to the practical problems at hand by analyzing the legal principles, concepts and doctrines because it involves examination of legal statues or rules resulting in the formation of legal 'doctrines'²⁰. It can be "defined in simple terms as research which asks what the law is in particular area and aimed at specific enquiries in order to locate particular pieces of information.

Data Collection Tools

1.6.2. Data Source

The research used both primary and secondary sources. Thus the primary sources include dead files of Federal First instance Courts, the Federal High Court and the precedents of Federal Supreme court courts), statutes and legislations including international laws. Secondary sources involve books, journals, articles, reports, periodicals, newspaper and commentaries.

¹⁹ P. IshwaraBhat: Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles, January 2020, Pages 143–168 pp. 1

²⁰NandanMalhotra :A Critical Analysis Of Underlying Concepts Of Doctrinal Research Junior Associate at A.V. Gupta and Associates, Jammu, Jammu and Kashmir

1.7. Limitation of the Study

The main limitation of this study is lack of up-to-date data on PWDs in Ethiopia which the researcher believes could demonstrate in a better manner the extent of the need and the urgency needed to work on the issue.

1.8. Literature Review

Demoz Kassie's conducted a thesis that aimed at assessing existing laws which need to be repealed or modified since they are incompatible with CRPD and whether the FDRE constitution recognize rights of persons with disabilities and whether Ethiopia has got a comprehensive legislation that addresses the issue of persons with disabilities indicated that following the entry into force of the CRPD, disability is increasingly understood as a human rights issue.²¹

Demoz noted that Ethiopia has various laws that need to be repealed since these laws are incompatible with the CRPD. These includes article 41 (5) of the FDRE constitution which, as per the thesis, articulates both charity and medical model. These models reflected under the constitution clearly reflect the perspective on the rationale for the policies and programs developed for, with, and by people with disabilities in Ethiopia. He basically focused on functional laws irrespective of their implementation on the ground.

In addition, Aschalew Ashagre in the article titled "*Access to Justice for PWDs in Civil Proceedings before the Federal Courts of Ethiopia: The Law and Practice*", points out, for instance, that "the federal courts' courtrooms are generally not accessible to PWDs and many courtrooms lack chairs and tables that people with physical disabilities can use." and they are encountered with location and architectural barriers''. Other major barriers like sign language interpreter cost of litigation, absence of training relating the rights of PWDs for persons working in the administration of justice, attitudinal problems.²² Unlike DemozKassie's research, Aschalew Ashagreggo further on assessing application of laws relevant for person with disability. However, thematically his investigation was limited to access to justice in civil proceeding only.

²¹DemozKassie; Legislative Measures for Effective Implementation of CRPD in Ethiopia: A critical assessment, Submitted in partial fulfillment of requirement for Masters Degree in Law (LLM), Addis Ababa University, School of Law LLM Programme;2012 p.105

²²AschalewAshagre (2020), 'Access to Justice for PWDs in Civil Proceedings before the Federal Courts of Ethiopia: The Law and Practice', 14 Mizan Law Review 1:1-30) p.25-26

Muradu Abdo; in the article titled “*Disability and Access to Criminal Justice System in Ethiopia*”; indicated that it appears that authorities in the country have a longstanding policy of not appointing legal professionals with visual impairment as judges, and that this policy is justified by communication barriers rather than legal ones. A visually impaired person is said to be ineligible to serve as a judge because, among other things, she/he is unable to produce handwritten judgments and orders and cannot tell if a witness is lying because the witness cannot see her/his facial expressions while testifying.’ Inadequate courtrooms and offices, difficulties communicating with sign language-illiterate defendants during court proceedings, and lack of legal representation for people with disabilities were also mentioned in the article. It also touched on their experience handling cases involving people with disabilities.²³ His investigation has been limited to access to justice in criminal justice system.

Meselu Gobeze’s graduate thesis titled ‘Unveiling the Challenges of Ensuring Effective Access to the Criminal Justice System for Persons with Disability in Bahirdar City’ which aimed to highlight the shortcomings in Ethiopia's legal system and the practical difficulties in ensuring that PWDs in Bahirdar city had effective access to the criminal justice system also assessed what it referred to as the core elements and state obligations required by the UNCRPD to ensure effective access to justice, the degree to which Ethiopia's normative framework is sufficient to effectively protect the right of PWDs to access the criminal justice system, the guidelines governing the access to justice requirements of PWDs in the Amhara regional state, and the institutional and practical obstacles PWDs face in Bahirdar city.²⁴ However, since it was empirical research, scope of the study was particular to the case in Bahirdar city. Consequently, the finding revealed in the overall investigation lonely shows the status of Ensuring Effective Access to the Criminal Justice System for Persons with Disability in Bahirdar City.

that intended to assess the extent to which policies and laws in Tanzania and South Africa guarantee access to justice for PWDs and the extent policies and laws in Tanzania and South

²³MuraduAbdo; ‘Disability and Access to Criminal Justice System in Ethiopia’; Access to justice in Ethiopia: Towards an Inventory of Issues;p255

²⁴MesseluGobeze; unveiling the challenges of ensuring effective access to the criminal justice system for persons with disability in Bahirdar City ; Thesis Submitted In Partial Fulfillment of the Requirements for the Degree of Master of Laws (LL.M) In Criminal Justice and Human Rights at the School of Law, Bahir Dar University;2021 p.5-6

Africa address sexual violence against PWDs²⁵indicated that in South Africa and Tanzania, disability remains a largely invisible issue and, as such, there is a limited pool of literature from which to draw and noted that laws and policies in South Africa and Tanzania do not adequately protect PWDs from sexual violence and that laws in Tanzania do not provide adequate access to justice for PWDs in sexual violence situation ”. ²⁶

In their article titled "Advancing Access to Justice for the Poor and Vulnerable Through Legal Clinics in Ethiopia," Mizan Abate, Alebachew Birhanu, and Mihret Alemayehu indicated that Although the right to access justice is guaranteed by Ethiopian law, the majority of citizens, especially the poor and the vulnerable, continue to lack access to it because the various mechanisms (intended to ensure access to justice for these groups) have not been given adequate legal recognition and are not well-implemented. They contend that one effective strategy for filling the gap might be legal clinics offered by law schools. However, this study demonstrates that there are no legal clinics as such. Lack of expertise, law schools' commitment to running clinical programs, and financial issues have all prevented many law schools from establishing legal clinics.²⁷

Wachira Alice’s graduate thesis whose objectives include studying the theoretical and historical foundations of access to justice for PWD as well as the Kenyan legal system's access to justice for PWD²⁸also noted, among other things, that the meaning of “disability” set in the Persons with Disabilities Act (PDA) and the Constitution of Kenya should be amended to be broad so as to include PWD who would be excluded from the current definition. The thesis also noted that by narrowly defining "disability," some groups feel excluded by the definition and that, depending on a person's region of origin, type of impairment, or setting in which they are handicapped, “disability” can mean different things to different people. The thesis also noted that. Wachira also recommended that the government of Kenya must set up a supportive policy, legal framework, and institutional frameworks to support equal opportunity and economic

²⁵PETER JOSIAH SHUGHURU; ‘sexual violence and access to justice for persons with disabilities in Tanzania and South Africa’; LLM thesis submitted in partial fulfillment of the requirements for the master of laws degree (Human rights and Democratization in Africa), Centre for human rights, faculty of law, University of Pretoria;p.2-3

²⁶Ibid p.6 and 45

²⁷Mizan Abate; AlebachewBirhanu, and MihretAlemayehu; ‘advancing access to justice for the poor and vulnerable through legal clinics in Ethiopia: Constraints and Opportunities’ p.1

²⁸Wachira Alice Mukami ‘Access to Justice for Persons with Disability in Kenya: Interrogating the adequacy of the legal framework’; A thesis submitted in partial fulfillment of the award of the degree of masters of laws university of Nairobi, Kenya; November 2021 p.5-6

empowerment for PWD. Kenya's parliament should enact laws to give effect to the constitutional provisions relating to their rights.²⁹

Wilson Macharia's graduate thesis titled 'access to justice for persons with disabilities in Kenya; from principles to practice' especially the part that delved in to unpacking the right to access justice as enshrined in the UNCRPD is of high relevance to this study. They demonstrate the extent to which 'substantive justice' has been provided for PWDs in Kenya. They further reinforce the duty of the state to take actions to ensure that access to justice is guaranteed for all.³⁰ Here the study is conducted in Kenya only.

In general all investigation conducted so far are relevant however no comprehensive conducted on existing status of laws implementation on rights of person with disability. Thus, previous research works are neither thematically nor geographically identical and there is temporal difference.

1.9. Scope of the Study

Thematically, scope of the study is confined to analyzing Ethiopian legal framework governing access to justice for PWD and examining the extent to which laws and the practice in Ethiopia guarantee implementation of the right of access to justice for PWD as stipulated in the CRPD. Therefore, for the purposes of this study, the legal framework assessment is limited to national laws that directly or indirectly guarantee the access to justice of PWDs as defined by Article 13 of the CRPD.

Geographically, since the paper is conducted through doctrinal research methodology, research reports, books, articles, journals and documents addressing the country are addressed. However, for the purpose of feasibility and due to resource limitations, the study give emphasis court decisions at federal courts and other federal governmental organs involved in administration of justice in addition to observing their physical accessibility for PWDs.

1.10. Organization of the Study

The research contains five chapters. The first chapter introduces what the study is all about. Accordingly it contains background to put the study in to context, problem statement which sets the gap to be investigated, study objectives and the research questions, research methodology,

²⁹Ibid p.64

³⁰Ibid p.61-63

significance of the study and limitations of the study, literature review, and scope of the study and the chapter outline. Chapter two highlight of conceptual assessments on the issue of access to justice and disability. The chapter also presents overview of major international and regional legal framework on the right of access to justice for persons with disabilities. Chapter three presents the Ethiopian legal framework governing access to justice for persons with disability. In this chapter in-depth analysis of laws that recognize and protect the right of PWD in accessing justice has been made. Chapter four assesses and presents the extent to which laws and the practice in Ethiopia guarantee implementation of right of access to justice for PWDs as enshrined in the Convention on the Rights of Persons with Disability. Best practices on access to justice for PWD from other countries which provide lessons that Ethiopia can adopt are also assessed in this chapter. Lastly, Chapter Five provides conclusions and recommendations.

CHAPTER TWO

THE CONCEPTUAL AND INTERNATIONAL LEGAL FRAMEWORK ON THE RIGHT TO ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES

2.1. Defining Access to Justice

Literatures are inconsistent in defining the term access to justice. As a result there is no single accepted definition to the concept. But it is not to say that it is never explained, rather reason for difference scope. As Lemlem said “*some definitions express access to justice narrowly and some define it in broad ways*”³¹. Access to justice can be defined as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards,” and it is also seen as fundamental to the protection of human rights³². The term access to justice may refer to the ability of individuals or groups to file claims of alleged rights infringement before judicial and quasi-judicial bodies, as well as the potential for the adjudicating body to render judgment on the “claim in a fair and impartial manner on the basis of the evidence and in accordance with the applicable rules of law.”³³ It is the equity with which those from differing backgrounds are able to gain from the justice delivery system³⁴. Accordingly, numerous human rights documents dealing with various facets of the concept of access to justice stipulate the elements of access to justice elaborately³⁵. Access to justice in functional justice system is based on rule of law, foundation for the enjoyment of other rights, including the right to a fair trial, well organized legal advice and other important safeguard that ensures fundamental fairness and public trust.

³¹LemlemDejenu: the right to access to justice for persons with disability in civil matters before Ethiopian federal courts, a thesis submitted to the college of law and governance studies Jimma University in partial fulfillment of the requirements for the master’s degree (LLM) in human rights and criminal law, July 2020, pp. 11

³² Ibid

³³ Samuel P. Baumgartner (2011), ‘Does Access to Justice Improve Countries’ Compliance with Human Rights Norms? *Cornell International Law Journal*, 2011, p. 457.

³⁴ Richard Bowd: ‘Access to justice in Africa, Comparisons between Sierra Leone, Tanzania and Zambia’ Policy Brief 13, October 2009

³⁵ *ibid*

Access to justice encompasses peoples including PWD definite access to the system; procedure, information, and locations used in the process of justice and who sense abused bring their case to justice system for redress take part in the battle field for example, as witnesses or as jurors in a trial.³⁶ A paper prepared by United Nation development program stipulates that fairness, or ensuring that the legal and judicial outcomes are just and equitable, must be the defining characteristic of access to justice, which goes beyond enhancing a person's access to the courts and securing legal representation. Some other understood by taking in to constituting elements. These are the right to challenge the legality of detention, the right to an effective remedy, the right to access court, the right to adequate redress, and the right to a speedy trial. These include the rights to a fair hearing, equality before the law, liberty and security of the person in particular. Therefore, access to justice, as a concept, encompasses all the elements needed to enable people to identify and manage their everyday legal needs and address their legal problems, seek redress for their grievances, and demand that their rights be upheld.³⁷

2.2. Major Components of Access to Justice

2.2.1. Legal Aid and Representation as Component of Access to Justice

As stated earlier, since its inception, the phrase "access to justice" has been the focus of ongoing discussion³⁸. It is not to say that there is no definition to it. The notion access to justice could mean "the ability of individuals or groups to bring claims of alleged rights infringement before judicial and quasi-judicial bodies, as well as the ability of the adjudicating body to rule on the claim in a fair and impartial manner on the basis of the evidence and in accordance with the applicable rules."³⁹ It is the equity with which those from differing backgrounds are able to gain from the justice delivery system.⁴⁰ Accordingly, the components of access to justice are specified in a number of human rights documents that address various facets of the concept.⁴¹ One requirement for meaningful access to justice that aims to enable petitioners to obtain adequate redress or an effective remedy is legal assistance or legal aid⁴². So it is one component of access

³⁶Supra note at 37, pp 11

³⁷ Access to Justice Measurement Framework, Measurement Working Group: YvonDandurand and Jessica Jahn, School of Criminology, University of the Fraser Valley, & International Centre for Criminal Law Reform and Criminal Justice Policy, with the assistance of Ms. Jane Morley and Mr. Tim Roberts.

³⁸Mizanie Abate, et'al 'Advancing Access to Justice for the Poor and Vulnerable through Legal Clinics in Ethiopia: Constraints and Opportunities' *Mizan Law Review*, Vol. 11, No.1 September 2017, pp. 2 (Here in after Mizane Abate et al)

³⁹ Samuel P. Baumgartner (2011), 'Does Access to Justice Improve Countries' Compliance with Human Rights Norms?' *Cornell International Law Journal*, 2011, p. 457.

⁴⁰ Richard Bowd: 'Access to justice in Africa, Comparisons between Sierra Leone, Tanzania and Zambia' Policy Brief 13, October 2009

⁴¹ ibid

⁴²Mizane Abate et al, pp. 6

to justice with other elements such as access to courts, fair and public proceedings, effective redress, and trials by competent, independent, and impartial tribunals.⁴³ Monjuru IKabir reiterated that legal aid is increasingly seen as a vital component of fair and accessible justice systems and that it is necessary for the protection of rights.⁴⁴

Legal aid service mainly covers the right to be advised), the right to be defended and represented, and the right to legal aid where the person has no sufficient funds for private representation or if he does not have sufficient means to pay for it.⁴⁵ Because of this, there is a greater need to advance social justice generally and access to justice for those who are poor and vulnerable in society specifically.⁴⁶ Lower income and other disfavored groups of citizens enable to benefit from relief that might be available through their local legal systems⁴⁷. Without access to legal aid, millions of people around the world are at high risk of having their rights ignored or violated when they interact with a criminal justice system, including through arbitrary pretrial detention, torture, coerced confessions, and/or wrongful convictions⁴⁸. Therefore, access to legal aid is central for ensuring access to justice, especially for the poorest and most vulnerable people. As emphasized by the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, legal aid is an essential aspect of a fair, humane, and efficient criminal justice system based on the rule of law⁴⁹. Significant legal aid is a crucial component of an operative justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process, states should guarantee the right to legal aid in their national legal systems at the highest possible level.⁵⁰

⁴³ Ibid

⁴⁴ Widening Access to Justice: Quality of Legal Aid and New UN Principles and Guidelines on Access to Legal Aid, International Workshop, Organized jointly by the United Nations Development Program, the Ministry of Justice, and the National Legal Aid Council of the Republic of Moldova, June 2013, pp. 3 (Here in after Widening Access to Justice)

⁴⁵Mizane Abate et al, pp. 6

⁴⁶T.O. Ojienda and M.Oduor 'Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya', *International Journal of Clinical Legal Education*, (2002), Vol. 2, 52.

⁴⁷ Ibid

⁴⁸ Global Study on Legal Aid: Global Report, United Nations Development Program (UNDP), United Nations Office on Drugs and Crime (UNODC), October 2016 (here in after Global study on Legal Aid)

⁴⁹ Ibid

⁵⁰ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN, 67th, Agenda Item 103, UN Doc A/C.3/67/L.6 (3 October 2012)

2.2.2. The Right to a Fair Hearing

Fair hearing as a component of access to justice entails genuinely adjudication of cases from opening of file to final executions of judgments. Parties have the right to equality (equality of treatment and protection); the right to a reasoned decision as well as the right to secure the execution of final judgment⁵¹. The right to a fair trial is recognized in human rights instruments as including the right to instruct legal counsel at trial. Access to legal representation at trial is well established within domestic understandings of fair trial, as well as through international conventions such as the Universal Declaration of Human Rights⁵², particularly, the human right committee stressed under comment 32 about this right. The right to fair hearing includes not only the right to be heard before justice organs but also infrastructure necessary to access rooms, offices especially for persons with disability. It is to mean courts and tribunals should be equally accessible for all sections of the society including the poor, the disadvantaged, the marginalized, women, children, persons with disability, and others. Fair trial as a pillar to access to justice includes a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a *competent, independent and impartial* court or tribunal after a fair and public hearing’, together with this 25(2) (d) right: to defend himself or herself personally or through legal assistance chosen by him or her.⁵³ Therefore, for access to be effective justice any physical and nonphysical hurdles should be distant or at least kept at minimum physical proximity of court and tribunal should be guaranteed and court fees should be kept at a minimum not to bar individuals from petitioning courts to obtain redress.

2.2.3. Effective Remedy

For there to be meaningful access to justice, claimants must be able to obtain adequate redress or an effective remedy that is proportionate to the harm they have suffered as a result of the violation of their legal rights or other rights, such as restitution, compensation, rehabilitation, satisfaction, and the guarantees they have the right to lodge a petition or appeal.⁵⁴. Effective remedy can be related to the competence of ensuring substantive and procedural fairness through

⁵¹ Supra note at 37 pp. 17

⁵² Asher Flynn,* Jacqueline Hodgson et’al: Legal Aid and Access To Legal Representation: Redefining The Right To A Fair Trial, pp. 2

⁵³ id

⁵⁴ Mizanie Abate et’al, Advancing Access to Justice for the Poor and Vulnerable through Legal Clinics in Ethiopia: Constraints and Opportunities, Mizan law review, vol. 11, no.1 September 2017, pp. 6

satisfying disputants' substantive interests, satisfying disputants with the dispute resolution process itself, reducing risks related to disputes and harm to disputants and others, including society generally, providing greater choice in dispute resolution processes for disputants and ADR professionals, increasing disputants' capabilities to handle other disputes, promoting productive relationships between disputants, satisfying disputants with the services of dispute resolution professionals, improving the culture of disputing for disputants, professionals, and society, promoting compliance with principles expressed in the law, such as non-discrimination and equality⁵⁵. In order to measure the right to an effective remedy as a component of access to justice, it is important to have bodies that can determine the right to reparation and award redress for harm suffered, as well as access to relevant information about violations and reparation mechanisms with readily available and accessible complaint mechanisms, investigation bodies and institutions, including independent judicial. Due to their vulnerability, part of the society with disability needs more protection and attention than non-disables. They should not feel their disability a sinful opportunity.

2.2.4. Legal Awareness

As a matter of principle and legality ignorance of law doesn't make a person free for the act what he/she committed unconsciously due to knowledge gap. Legal awareness is essential because it is challenging to access the justice system without being aware of one's legally protected rights and familiar with the procedures for doing so.⁵⁶ It contributes significantly to the fight against injustice by increasing awareness of rights and protections, which is essential to claiming them and seeking redress for everyone, including PWD.⁵⁷

Making people aware of their rights and responsibilities while paying particular attention to assisting the underprivileged and the poor enables them to stand up for themselves and seek legal counsel when necessary. [Emphasis added]⁵⁸.

2.2.5. Equality and Non Discrimination

All people must have access to justice under the principles of equality, regardless of their race, color, sex, language, religion, political opinion, national origin, or other status. [Emphasis added].⁵⁹ As enshrined

⁵⁵Supera note at 58, pp. 3

⁵⁶ Editor Kokebe Wolde: assessment Of Legal Aid In Ethiopia: A Research Report & Proceeding of the National Workshop of Legal Aid Providers, Center for Human Rights Addis Ababa University December 2013.

⁵⁷Supra note at 37, pp.37.

⁵⁸Ibid

in relevant laws that peoples irrespective of their background and liens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit of law equally without any discrimination.

Thus entitlement to equal protection by the law and the prohibition of discrimination in the application of the rights to which PWD have and there are non-discrimination calls for the elimination of discrimination in many areas, including access to justice, including PWD that States should promote and fully protect these scheme of the community human rights and fundamental freedoms without regard to their special need.

To enable the enjoyment of the right to access to justice without discrimination, adequate information (outreach) must be made available to person with disabilities, in all possible ways that they can enjoy, as well as institutional support including financial and legal assistance, when needed in especially during allocation of budget and tribunals need to be accessible geographically dispersed. Positive obligations of States also include the adoption of non-discriminatory legislation, the removal of any legal, social or economic obstacle preventing PWD from the enjoyment of all elements of the right of access to justice, from the access to a judicial mechanism, through the right to a fair trial, to the right to an effective remedy, etc.⁶⁰

2.3. International and Regional Legal Framework on the Right of Access to Justice for Person's with Disability

2.3.1. The UDHR, ICCPR and ICESCR

With the enactment of the Universal Declaration of Human Rights on December 10th, 1948, access to justice received official attention from 48 UN member states. This document was hailed as the gold standard for human rights, especially for outlining the essential elements of access to justice for the first time⁶¹Article 8 of the Declaration reads, “*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights*

⁵⁹IOM, international migration law information note, international migration law unit June 2019,pp.5

⁶⁰Ibid

⁶¹Pathshala; Access to Justice in international law; Content for post graduate courses; an MHRD Project under its National Mission on Education through ICT(NME-ICT);p5-6

granted to him by the Constitution or by law". It is made clear in Article 8 of the UDHR that rights without remedies would be useless. It also demonstrates the need for States to safeguard and advance citizens' fundamental rights by providing them with access to tribunals or courts that can uphold their claims.⁶²

According to the Declaration, States must establish capable systems that would guarantee the upholding of individual rights by giving them access to efficient redress. Therefore, the Declaration states that whenever a man has a right, he must have the means to uphold that right and must be able to seek an effective remedy in the event that it is violated.⁶³ The other articles of the UDHR require States to take precautions to ensure that no circumstance or situation should be used as justification for violating a person's rights as stated in the Declaration. The UDHR stipulates the right to a fair trial by independent, impartial judges, the presumption of innocence, and all other defense-related protections in criminal cases.⁶⁴ Being only a declaration, the UDHR is not by itself enforceable. The phrase "common standard of achievement for all peoples and all nations" is used to describe it. The principles enshrined therein became a "juridical commitment" with the creation of the International Bill of Rights, which consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and its two Optional Protocols.⁶⁵

In connection with this, the ICESCR, a legally binding document that safeguards a variety of economic, social, and cultural rights without discrimination on the basis of creed, political affiliation, gender, or race, contains the right to access justice codified.⁶⁶ Article 2(1) of the Covenant indirectly addresses the right to access to justice by providing that, "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical to the maximum of its available resources with a view to achieving progressively the full realization in the present Covenant by

⁶²Ibid

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶Dias Kadwani Ayesha & Welch Gita (eds.), Justice for the Poor, Perspectives on Accelerating Access, Oxford University Press, New Delhi, 2009, p. 23-24

all appropriate means including particularly the adoption of legislative measures.⁶⁷ It thus follows that States must have proper grievance redressed mechanism in place for their citizens.⁶⁸

The International Covenant on Civil and Political Rights (ICCPR), which was adopted by a resolution of the United Nations General Assembly on December 16, 1966, contains some of the elements that are a crucial part of the right to access justice. The right to access to justice is recognized by the Covenant. The recognition on the right, however, is only in a narrow sense and not in the way that it is understood in contemporary society. The ICCPR's Article 2 Paragraph 3 guarantees that States will protect a person's rights in three different ways. The right to a remedy must be established by competent judicial, administrative, or legislative authorities, and the States must ensure its enforcement in the event of a violation of rights or freedoms.⁶⁹ The spirit of access to justice is fully captured in Article 14 of the ICCPR. According to this Article, everyone must be treated equally before the law's courts and tribunals and be given a fair trial that is open to the public.⁷⁰

In the context of criminal proceedings, the ICCPR sets out a range of procedural due process rights that sets out specific obligations of States to ensure a speedy trial and provide state-funded counsel for persons who are unable to afford the costs of legal representation.⁷¹ While Article 14(3)(c) of the ICCPR mandates "trial without undue delay," Article 14(3)(d) states that an accused offender has the right to "have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it."⁷² It appears that the ICCPR's Article 14 contains guidelines for criminal offense trials. However, its general principles can be used in cases that are not criminal in nature. As a result, the ICCPR's Article 2 paragraph 3 and Article 14 each recognize the right to access justice in their own unique but related ways.⁷³

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Pathshala(n37) p.8

⁷⁰ Brownlie Ian, Basic Documents on Human Rights, 3rd Edition, Clarendon Press, Oxford, 1992, p.130

⁷¹ Toolkit on Disability for Africa ;Access to Justice for Persons with Disabilities; Module 8 United Nations Division for Social Policy Development (DSPD) Department of Economic and Social Affairs' 4-5

⁷² Article 14 of the ICCPR

⁷³ Pathshala(n45) p.10

2.3.2. Convention on the Rights of Persons with Disabilities (UNCRPD)

The right to access justice is applied in the context of disability under the Convention on the Rights of Persons with Disabilities. Access to justice is specifically addressed in Article 13 of the Convention, which directs States parties to ensure that people with disabilities have effective access to justice on an equal basis with others, including by providing certain accommodations, in order to facilitate their effective role as direct and indirect participants (art. 13(1)). It also specifies the rightful actions that must be taken in order to fulfill the legal rights of persons with disabilities. For instance, according to article 13(2), states must encourage the proper training of those working in the field of administration of justice, such as police officers and prison staff (art. 13(2)).⁷⁴ Although all of the CRPD's provisions are pertinent to access to justice, several, beyond Article 13, are of particular importance. In this respect, according to Article 5's requirements for equality and nondiscrimination (art. 5(1)), States Parties must acknowledge that all people with disabilities are entitled to equal protection under the law and equal benefits from it (art. 5(1)).⁷⁵ State parties must further prohibit all forms of disability-based discrimination and ensure that people with disabilities have equal and effective legal protection from discrimination on all grounds.⁷⁶

Hence, Article 5 of the CRPD calls for both the elimination of discriminatory laws, policies and practices, as well as the development of proactive policies for achieving equality for persons with disabilities. Specific measures under Article 5(4), that include affirmative action measures, should be adopted.⁷⁷ Articles 6 and 7 of the Convention reinforce these obligations with regard to women and children with disabilities, respectively. Active policies must be accompanied by a robust non-discrimination framework that addresses all forms of discrimination, including explicitly the denial of reasonable accommodation.⁷⁸ Besides, Article 12, *'Equal Recognition before the Law, requires State parties to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, and to take appropriate measures to provide access by persons with disabilities to the support that they may*

⁷⁴Toolkit on Disability for Africa; Access to Justice for Persons with Disabilities; United Nations Division for Social Policy Development (DSPD) Department of Economic and Social Affairs; p 4-5

⁷⁵ Ibid

⁷⁶ Ibid p 4-5

⁷⁷<https://www.ohchr.org/en/calls-for-input/report-equality-and-non-discrimination-under-article-5-convention-rights-persons>; last accessed February 7, 2023)

⁷⁸ Ibid

*require in exercising their legal capacity.*⁷⁹ People with disabilities have historically been denied the right to legal capacity. People with psychosocial disabilities, intellectual disabilities, communication difficulties, and in some cases physical disabilities have been deemed legally incapable by various states at various times. Access to justice is affected by one's ability to exercise other human rights⁸⁰Even after the CRPD went into effect; this is the present reality of people in many countries, including Ethiopia, who have intellectual and psychosocial disabilities. Therefore, states are required by Article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD) to recognize the fullest possible extent of the legal capacity of persons with disabilities.⁸¹

Additionally, Article 14 (Liberty and security of the person) mandates that States Parties ensure that people with disabilities are not unlawfully or arbitrarily deprived of their liberties, that any such deprivation is legal, and that the existence of a disability in no way justifies such a deprivation.⁸² The implementation of Article 14 is crucial because people with disabilities have experienced serious human rights abuses while being held captive or living in institutions, and because those who are held captive or isolated in their homes with no access to the outside world may not have the freedom or ability to file legal claims for their own protection⁸³. Additionally, Article 16, Freedom from exploitation, violence, and abuse, directs State parties to implement effective legislation and policies, including those that focus on women and children, to ensure that instances of exploitation, violence, and abuse against people with disabilities are identified, investigated, and, where appropriate, prosecuted. This is done to protect people with disabilities.⁸⁴

It is worthy of note that access to justice is crucial for development and poverty reduction, as well as for the protection and enjoyment of all other rights. This is in addition to the fact that it is a fundamental right in and of itself. For instance, "a person with disabilities who feels as though their right to employment has been denied may wish to turn to the legal system to seek redress. However, if the legal system does not take into account their physical, communication, or other disability-related needs and/or expressly discriminates against them, then it is evident that denying them access to the legal system also denies them protection for their right to

⁷⁹Pathshala(n49) p.4-5

⁸⁰African Disability Rights Yearbook; Pretoria University Law Press Volume 7; 2019

⁸¹ Ibid

⁸²Toolkit on Disability for Africa(n50) p 4-5

⁸³Ibid

⁸⁴Ibid

employment.⁸⁵ Access to justice is affected by one's ability to exercise other human rights. For instance, those who have been denied the right to an education will be less able to understand their rights and use the justice system than those who have received a quality education. As a result, the human rights of persons with disabilities are interdependent, interconnected, and indivisible.⁸⁶

2.3.3. African Charter on Human and Peoples Rights (African Charter)

Ethiopia has also ratified various African Union human rights instruments including the African Charter on Human and Peoples' Rights which recognize the rights of persons with disabilities. In this regard, the African Charter on Human and Peoples Rights (African Charter) guarantees every person in a state that has ratified it the right to have their case heard and the right to a speedy trial by an impartial court or tribunal.⁸⁷ Article 18 (4) of the Charter also provides that 'Older persons and people with disabilities shall also have the right to special measures of protection in keeping with their physical or moral needs.'⁸⁸

2.3.3. The protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa

The purpose of this protocol is to provide protection of the rights of persons with disabilities. The protocol recognizes rights and freedoms of persons with disabilities in society as well as provides for duties of persons with disabilities (Article 31).⁸⁹ The rights espoused in the protocol include right to access justice, non-discrimination, right to equality, right to life, right to liberty and security of person, freedom from torture or cruel, inhuman or degrading treatment or punishment, protection from harmful practices, protection in situations of risk, right to live in the community, accessibility, right to education, right to health, habilitation and rehabilitation, right to work, right to an adequate standard of living, right to participate in political and public

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Kenya National Commission on Human Rights; Advisory to the Ministry of labor, social security and services on Kenya's Ratification of The Protocol to the African Charter on Human and Peoples' Rights on The rights of Persons With Disabilities in Africa; 2020 p.4-5

life, self- representation, right to freedom of expression and opinion, right to access to information, right to participate in sports, recreation and culture, right to family, among others.⁹⁰

In terms of duties, the Protocol recognizes that persons with disabilities have duties on an equal basis with other persons as elaborated in the African Charter. States Parties are required to ensure that persons with disabilities are rendered the forms of assistance and support, including reasonable accommodations, which they may require in performance of such duties. The protocol requires state parties to popularize the Protocol, and ensure the widest possible dissemination.⁹¹

⁹⁰ Ibid

⁹¹Ibid;p 5

CHAPTER THREE

3. THE ETHIOPIAN LEGAL FRAMEWORK GOVERNING ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES

3.1. Constitution of the Federal Democratic Republic of Ethiopia

Article 41(5) of FDRE Constitution outlines the state's obligation to provide citizens with disabilities with the necessary support and rehabilitation services. Accordingly State must, within its financial capacity, allocate funds for the elderly, children without parents or guardians, and people with disabilities. However this is the only constitutional provision unambiguously refers to disability and/or persons with disabilities⁹² despite some provisions that indirectly address disability. For instance, Article 25 of the Constitution, which states that: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law, indirectly addresses disability. Without explicitly mentioning disability or/and persons with disabilities, this equality provision implies that those with disabilities are entitled to the same protection under the law.⁹³

Articles 14 through 44, or 33 percent of the total 106 articles in the Ethiopian Constitution, focus on fundamental freedoms and rights, which can legitimately be assumed to include protections for people with disabilities. However, all but article 41(5) make no explicit mention of disabilities.⁹⁴

Here, it's important to emphasize two points. First, because the FDRE Constitution only addresses assistance and rehabilitation, it is heavily influenced by the medical-charity models of disability. Second, there are no specific provisions regarding the protection of PWDs' rights in the Constitution that can be directly invoked. As a result, the FDRE Constitution lacks specific provisions addressing the rights of PWDs, just like the core international human rights instruments.⁹⁵ According to the constitutional experience of many countries, an explicit mention

⁹²Dagnachew B Wakene,* Priscilla Yoon** & Tsion Mengistu*** Ethiopia; Country Report p.216.

⁹³ Ibid

⁹⁴ Ibid

⁹⁵Aschalew Ashagre (2020), (n23) p.11-12

of disability in at least the equality and non-discrimination provision is therefore strongly advised.⁹⁶

According to Article 37 of the FDRE Constitution, which is the supreme law of the land, access to justice is also a fundamental human right. Despite the fact that the Constitution makes no specific mention of PWDs' right to access justice, everyone, including PWDs, is covered by Art. 37 if they bring a valid case before a court or other legally recognized tribunal. However, because Art. 37 of the Constitution is a general provision, it cannot adequately guarantee PWDs' access to justice in the absence of specific legislation that would be helpful in ensuring that right, such as in civil proceedings.⁹⁷

3.2. Right to Employment of Persons with Disability Proclamation No. 568/2008

The Right to Employment of Persons with Disabilities Proclamation, passed in 2008, is also another law pertinent to the defense of PWDs' rights and their right to access justice. By incorporating the core principles of the CRPD, this proclamation directly addresses the employment rights of people with disabilities. In contrast to the charitable and medical models of disability, the Proclamation affirms human rights and social models of that condition.⁹⁸

In order to make it easier for PWDs to exercise their right to access justice, two significant procedural provisions have been incorporated into the declaration of the employment right of PWDs. These clauses cover the burden of proof in cases of discrimination and the ability of disability associations to file legal claims when their members' rights are violated. Article 7 of the proclamation stipulates this in this regard as follows:

“Burden of proof”(1) any person with disability who alleges that discrimination on the ground of his disability existed with respect to recruitment, promotion, placement, transfer or other conditions of employment may institute a suit to the competent court without the requirement of the burden of proof.

⁹⁶Dagnachew B Wakene,* Priscilla Yoon** &TSION Mengistu,(n65),p.216

⁹⁷Ibid

⁹⁸Aschalew Ashagre (2020),(n23) p.11-12

The burden of proof rests with the defendant in a lawsuit brought under Sub-Article (1) of this Article to establish that there was no act of discrimination.⁹⁹It is clear that this clause directly modifies the rule of evidence. Usually, the rule is that whoever asserts a fact must substantiate it. The burden of proof for a plaintiff with a disability who files a lawsuit alleging that he was subjected to discrimination because of his disability, however, has now been placed on the defendant employer. Therefore, it will be the responsibility of the employer to demonstrate that there was no disability-based discrimination.

Given the practical difficulty of proving discrimination, this special rule has been made in the interest of people with disabilities.¹⁰⁰Disabled people may also be the targets of systematic discrimination, which they are unable to demonstrate in a court of law. Due to this, the legislator has chosen to release them from the requirement to present evidence and instead permit them to simply bring the case for resolution. As a result, the rule is thought to make it easier for people with disabilities to access justice by removing a hindrance to exercising the right.¹⁰¹

Additionally, the proclamation's Article 10 affirms disability associations' authority to file lawsuits on behalf of their members. By lowering their financial burden and removing the obstacle of finding attorneys, such an explicit law provision on associations' ability to bring actions on behalf of their members increases the chance for victims of rights violations to seek redress. Article 10 on the ability to take legal action is as follows:

*“Any person with disability whose rights are infringed due to non-observance of the provisions of this Proclamation, regulations or directives issued for the proper implementation of this proclamation or the association of persons with disabilities of which he is a member, or the trade union of which he is a member, or the concerned organ entrusted to implement this Proclamation may institute a suit before the competent court.(2) The court shall render its decision within 60 days from the date on which the suit is instituted. Although these provisions of the proclamation apply specifically in cases of employment discrimination based on disability, they are useful in facilitating the application of access to justice in employment legal suits which is the area where persons with disabilities have a number of cases”.*¹⁰²

⁹⁹United Nations Convention on the Rights of Persons with Disabilities; Consideration of reports submitted by States parties under article 35 of the Convention; Initial reports of States parties due in 2012 Ethiopia; CRPD/C/ETH/1; Committee on the Rights of Persons with Disabilities;p.21-23

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Ibid

3.3. Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No.1263/2014

The FDRE promulgated Proclamation No. 1263/2014, which outlines the authority, responsibilities, and directives for the FDRE's executive organs. In relation to people with disabilities, article 19/1 (Common Powers of Ministries) states that ministries (including the Ministry of Justice under Art. 16(21)) shall have the authority and obligations within their purview to ensure that the policies, strategies, laws, development programs, and projects they formulate benefit women, children, youth, people with disabilities, and the elderly; facilitate enabling conditions for people with disabilities, the elderly, and vulnerable groups in society; and promote the rights of people with disabilities, the elderly, and those with disabilities.

Additionally, the Ministry of Women and Social Affairs' powers and duties are outlined in the Proclamation under Article 36(1), which states that one of the ministry's primary responsibilities is working with relevant organizations to prevent social and economic problems and provide essential services to groups of the community in difficult situations, especially the elderly and people with disabilities as clearly give under article 36(1) (g).

A detailed program that is compatible with the nation's overall development plan must be prepared, and it must be put in place once endorsed (Article 36(1) (g)). It is also given the authority and responsibility to initiate policies, strategies, and laws for women, young people, children, and people with disabilities, the elderly, and other vulnerable groups in development.

According to Article 36(1) (x) of this proclamation, which is specifically relevant to this study, the Ministry is required to carry out the responsibilities and powers given to the Ministry of Labor and Social Affairs (MOLSA) by Proclamation No. 676/2010, which gave MOLSA the authority to carry out all actions required for the implementation of the CRPD. The Ethiopian Human Right Commission's annual human right conditions report presented for the House of Peoples Representatives of Ethiopia for the Period June 2021-June 2022 also indicated that Ministry of Women and Social Affairs, with concerned organs, is working on drafting a Comprehensive Disability Proclamation.¹⁰³

¹⁰³Ethiopian Human Right Commission's annual human right conditions report for the period June 2021-June 2022;p.8 and 61

CHAPTER FOUR

4. IMPLEMENTATION IN ETHIOPIA OF THE RIGHT OF ACCESS TO JUSTICE FOR PWDS AS ENSHRINED IN THE CRPD

4.1. Introduction

In this chapter researcher addressed implementation of crucial specific normative content that CRPD stipulates with the relevant provisions of the Ethiopian Criminal Procedure Code, the Civil Procedure Code, the Federal Courts Proclamation No.1234/2021, the FDRE Constitution, Federal Administrative Procedure Proclamation No. 1183 /2020and the FDRE Building Proclamation No. 624/2009 and other laws evaluate Implementation of access to justice for person with disabilities Ethiopia in light with CRPD.

4.2. The Right to Fair Trial, Accessibility of Justice Institutions Other Related Procedural Rights of Person with Disability

The commitment of procedural protection places a strong emphasis on making sure that people with disabilities can actually exercise the procedural rights incorporated into national and international human rights law "on an equal basis with others that is fair trial and equality (both equal treatment and equal protection)." It offers the steps required to get rid of the obstacles people with disabilities encounter when exercising their procedural rights.¹⁰⁴Such obstacles can take many different forms, such as physical restrictions on access to a courthouse or administrative building, guardianship laws that silence the legal voice of people with intellectual and psychosocial disabilities, docket files that are inaccessible to people with cognitive or intellectual disabilities, and court and other fees that make adjudicative process participation illusory.¹⁰⁵

The State is required by Article 13 to enact the procedural rights required to get sick of the sight of these obstacles. Such legislation is unavoidably general in nature, it must be definite enough

¹⁰⁴Markus Schefer; The Right to Access to Justice – Art. 13 CRPD (Convention on the Rights of Persons with Disabilities) , October 21, 2020 Annual Conference on the Rights of Persons with Disabilities 2020: Access to Justice (Online Conference),p.5-6

¹⁰⁵Ibid

to offer the necessary direction in unique circumstances and flexible enough to accommodate any adjustments that may be necessary. The procedural laws governing the relevant processes should adopt these provisions.¹⁰⁶

Here it is very essential to take in to consideration the impairment that each person encountered. A need of person having sight problem is totally different from the one who is deaf and the same is true for person who is without leg. Therefore, particular disability type and relative challenge must be addressed for the full realization of fair trial and other procedural rights with necessary accommodation. For instance, Murado Abdo asserted that, in practice, judges at the federal level use three methods when handling a witness with hearing and speech impairments. This was based on interviews with federal court judges. One strategy is for judges to inquire about the testimony of the witness themselves. The second alternative is to look for a sign language interpreter within the courtroom or on the court's grounds. Requesting an interpreter at a specified time from the Ethiopian Association of the Deaf, as the third option.¹⁰⁷

According to laws governing court interpreters, for instance, Criminal Procedure Code Article 27(4), "Where the Arrested Person is Unable Properly to Understand the Language in Which His Answers Are to Be Recorded, He Shall Be Provided With A Competent Interpreter Who Shall Certify the Correctness of All Questions and Answers," A qualified court interpreter must be chosen by the court when an interpreter is needed for any proceedings, according to Article 126 (2) of the same. Where none is available, it will choose a qualified interpreter, but no one who is related to the defendant, the prosecutor, or who is a witness themselves may be chosen. Additionally, they (the accused) have the right to request an interpreter's assistance at state expense when court proceedings are conducted in a language they do not understand, according to FDRE Constitutional Art. 20 (7).¹⁰⁸

Article 31 of the Federal Courts Proclamation No.1234/2021 in this respect made a progress and provides that the need to provide a competent translator to a person who doesn't know the working language of the court and the court shall similarly provide a sign language expert for concerned persons with disabilities. And federal courts at all levels shall organize interpreter's office with complete service. In the view of the author of this research, this explicit inclusion of a

¹⁰⁶Ibid

¹⁰⁷MuraduAbdo,(n24) p.234-235

¹⁰⁸ Ibid

sign language expert and organizing interpreter's office is a remarkable progress to implement guarantee of procedural accommodations in Article 13 of CRPD which aims to ensure that people with disabilities can exercise procedural rights derived from international human rights and national law "on an equal footing with others."

In addition, a related but distinct issue is that the application of the provisions dealing with interpretation is rather limited; they primarily consider the scenario in which the witness or the accused arrives at court. The police arrest, detain, and question a suspect and a witness before the case is sent to court for hearings, so it goes without saying that a criminal proceeding begins well before the trial stage.¹⁰⁹ However, the rules governing court interpreters do not specifically mention people with visual impairment. The 1965 Civil Procedure Code, on the other hand, governs all civil cases. The issue is whether the 1965 Civil Procedure Code has procedural provisions that can enable PWDs to exercise their CRPD-guaranteed right to access justice. Procedural rules are the main focus of reformers of the civil justice system because they are essential to understanding and providing meaning to the civil justice system.¹¹⁰ A critical challenge in solving the problem of cost, complexity and delay in civil justice is that of getting the rules right. It has been submitted that the nature and quality of a legal regime is revealed not only through substantive laws but also through clearly formulated procedural laws.¹¹¹ According to Jeremy Bentham, the rules of procedure play a crucial role in the administration of civil justice because they are the link between reliable evidence and wise judgments. Robert Allen Sedler also emphasized that the legal system is set up to ensure that judges have access to all pertinent evidence in order to determine the crucial facts and apply the substantive law to those facts. Procedure is, in essence, how substantive rights are enforced.¹¹²

Numerous helpful provisions for the proper administration of civil justice can be found in the Ethiopian Civil Procedure Code (CPC). Due to the fact that some of the barriers PWDs face in exercising their right to access justice involve resources and are therefore comparable to those encountered by people who are economically disadvantaged, for example¹¹³, the CPC under

¹⁰⁹MuraduAbdo,(n24) p.234-235

¹¹⁰AschalewAshagre (2020),(n23) p.17-19s

¹¹¹Ibid

¹¹² Ibid

¹¹³David Allen Larson; Access to Justice for Persons with Disabilities; An Emerging Strategy; School of Law; Hamline University, 2014 p.225

Article 467(2) provides whosoever is not possessed of sufficient means to enable him to pay all or part of the prescribed court fee shall be deemed to be a pauper and may apply for leave to sue as a pauper. The CPC, however, does not include any clauses that are sensitive to the needs of PWDs' right to access justice. This dilemma may, in large part, be due to the fact that the Ethiopian legal system, at the time the Code was promulgated in 1965, was unfamiliar with the concept of protecting PWDs' rights in general and their access to justice in particular. ¹¹⁴

As a result, at this time, the 1965 CPC's provisions cannot be used to improve PWDs' access to justice in civil proceedings. According to the FDRE Constitution, Ethiopia's legislator, who possesses the highest level of political authority, has not yet completed its legislative duty with respect to this matter. ¹¹⁵ Additionally, it does not appear that the legislative body has any prompt plans to update the Code. It is indeed time for Ethiopia to revamp its Civil Procedure Code and include procedural requirements that will help PWDs acquire access to justice. ¹¹⁶

Related to this Article 36 and 37 of the Federal Administrative Procedure Proclamation (FAPP) No. 1183 /2020 for instance states that adequate opportunity of hearing shall be provided before rendering any administrative decisions and the parties to the case has the right to appear in person and have the right to give testimony, to produce evidences, to access and examine evidences presented to the agency. Besides, the agency may use all legal methods to get documents of investigation and any other evidences from the party participated in the argument witnesses and professional persons.

Article 43-47 of the FAPP that deals with complaint against administrative decision also states that any person against whom an administrative decision is made has the right to lodge a complaint to the administrative agency. And all administrative agencies shall establish a complaint handling division and notify such establishment to clients. The complaint handling body shall properly examine the complaint it has received and present its recommendation to the head of the concerned agency or an officer duly authorized by the head of the agency. The decision of the head of the agency or an officer duly authorized by the head of the agency, after considering the recommendation of the complaint handling body shall be considered as the final

¹¹⁴ Ibid

¹¹⁵ Aschalew Ashagre (2020), (n23) p.17-19

¹¹⁶ Ibid

decision of the agency. An agency must provide written notice to the petitioner of the decision made in accordance with Article 46 of this Proclamation.

Even though the proclamation has been enacted recently, it does not contain provisions which provide procedural accommodation for PWDs. The proclamation rather states under Article 57 that the relevant provisions of the civil procedure code (CPC) shall apply to procedural issues not covered by the proclamation. However, as this study pointed out above, the CPC itself does not contain many provisions that are considerate of PWDs' right to access justice as guaranteed by CRPD. On the other hand, the guarantee of procedural accommodations in Article 13 of the CRPD, which aims to ensure that persons with disabilities can actually exercise the procedural rights incorporated from international human rights and national law, also provides the measures required to remove the hurdles persons with disabilities face when exercising their procedural rights, "on an equal basis with others." These barriers can take many different forms, such as physical ones that prevent access to a courthouse or an administrative building.¹¹⁷ A clause addressing the accessibility of the built environment, information, and communication can be found in CRPD article 9 as well. It clearly states that states parties must take the necessary steps to guarantee the right to accessibility for people with disabilities. FDRE Building Proclamation No. 624/2009 states in this regard that under Art. 36, "Any public building shall have a means of access suitable for use by physically impaired persons, including those who are required to use wheelchairs and those who can walk but are unable to negotiate steps." In any building where restrooms are needed, a sufficient number of such facilities must be made accessible to and usable by physically disabled people.¹¹⁸

This clause mandates that all buildings built in Ethiopia have accessibility features that people with physical disabilities can use. There must be alternatives to stairs for people who must use a wheelchair or crutches to get around. Access to public buildings must be provided for individuals, even those who can walk, in the event that they are unable to climb stairs. Additionally, PWDs must have access to restrooms in public buildings. Sanitation facilities must be accessible to PWDs without restriction. For this reason, the sanitation facilities in every public

¹¹⁷Markus Schefer,(n78),P.5-6

¹¹⁸Federal Democratic Republic of Ethiopia Building Proclamation no 624/2009, Art36 sub1 and 2

building must be suitable for persons who are physically impaired¹¹⁹This law mandates accessibility in the planning and building of every structure to guarantee suitability for people with physical disabilities. In this regard, physical observation, by the author of the research, on the recently completed similarly designed buildings of the Federal First Instance Courts (FFIC) located in Lideta, Kirkos and Yekasubcityin Addis Ababa reveals that the courthouses have alternative to the stairs until one arrives at the first ground floor of the buildings. Then the buildings have elevators (as alternative to climbing stairs) that any person can use including PWDs. However other items in the courthouses including judge's bench, attorney and spectator seating and witness stand and toilets don't have features that could be said is specially designed taking in to account for instance PWDs that need to use wheelchairs. Observation on the Federal First Instance Court and Federal High Court (FHC) building in Bole Sub City(both share a building) and the FHC building in Lideta where currently only criminal cases are handled ,in contrast, reveals that there are not even elevators that PWDs could make use of as an alternative to climbing stairs.

Hence, it is recommended that this law be implemented in a consistent manner across all the courthouses to implement, among others, Article 9 of the CRPD on accessibility of the physical environment. And the law should also be revised or regulations and directives should address several accessibility concerns of PWD, apart from those with physical disabilities. In this regard inclusion in Federal Courts Proclamation (FCP) of specific provision similar with Article 41(2) and (3) of Higher Education Proclamation No. 1152/2019 should be considered. In the interest of students with physical disabilities and learning disabilities, it is expressly stated that "Institutions shall, to the extent that circumstances and resources permit, relocate classes, develop alternative testing procedures, and provide different educational auxiliary aids." It also states that "building designs, campus physical landscape, computers and other infrastructures of institutions shall take into account the interests of students with disabilities."

Measures taken by Ethiopia like the sign language interpreter provided under Article 31 of the Federal Courts Proclamation No.1234/2021 will certainly contribute to comply with an aspect of CRPD Article 9 that deals with accessibility of information and communication. This then

¹¹⁹BelaynehAdmasu; Legal Protections Accorded to Persons with Disabilities under Ethiopian Law; Bahir Dar University Journal of Law Vol.3, No.2 (2013) p.325-327

permits the state to effectively implement Article 13 of the CRPD, which, among other things, requires the State party to enact those procedural accommodations that are required to remove obstacles of very diverse nature persons with disabilities face when exercising their procedural rights and ensure "effective access to justice for PWDs," which is the main obligation of article 13 of the CRPD. With such development, Ethiopia will also be able to adhere to the CRPD Committee's concluding observations, which have increasingly offered insight into the nature and range of procedural accommodations in the legal system, particularly those that can enhance effective communication. For instance, the CRPD Committee has advised states parties to guarantee the use of alternative communication methods, the guarantee of sign language interpretation, and complete accessibility to the physical environment, transportation, and communication.¹²⁰ It is also recommended that state parties to introduce legislative reforms so that the national administrative, criminal and civil procedures include the requirement to make procedural accommodations for PWDs.¹²¹

Article 13 also emphasizes the fact that individual requirements for an effective participation in adjudicative procedures may vary greatly depending on the parties' ages by defining it as "age-appropriate." These distinctions must be taken into account, according to Article 13. The phrase "age-appropriate" is used explicitly in article 13 to emphasize the practical significance of age considerations in the design of procedural rights. Consequently, in addition to the state's duty to pass laws, article 13 bestows a personal right to procedural accommodations.¹²² With this right, procedural rights under domestic and international law are strengthened and clarified while being tailored to the unique needs of a person seeking justice who has a disability.¹²³

In this regard, in Ethiopian law, the Criminal Procedure Code presents chapter of ten articles (Arts. 171-80) devoted to "procedure in cases concerning young persons" apparently purports to provide a comprehensive and self-contained guide, covering criminal procedure from the first stages to the last. Complaint and accusation, arrest, investigation, charge and plea, trial, judgment, sentence and appeal – all are apparently meant to be governed by these few

¹²⁰CRPD Committee 'Concluding observations on the initial report of Costa Rica' (12 May 2014) UN Doc CRPD/C/CRI/CO/1 para 26

¹²¹CRPD Committee, 'Concluding observations on the initial report of Ecuador' (27 October 2014) UN Doc CRPD/C/ECU/CO/1 para 27

¹²²Markus Schefer, (n78), P.5-6

¹²³ Ibid

provisions. Inevitably, such brief coverage has left many matters unsettled, and it is often problematic whether and how much of the rest of the Code should be used to fill the gaps.¹²⁴

4.3. The Right to Legal Aid and Representation for person with disability

The concept of “legal aid” is intimate from its purpose as a vibrant means of access to justice¹²⁵. Legal aid may be defined as the assistance of counsel and legal advocacy for people living at or near poverty in legal matters that fall outside of the justice system. It occasionally mentioned as ‘public legal services’ where funded by the State, or ‘State legal services’ where provided by state institutions¹²⁶. Legal aid also includes provision of legal services by a broad range of non-state actors including non-governmental organization, professional associations and academic institutions¹²⁷. The CRPD's article 13 on access to justice serves as a reminder and confirmation of the difficulties PWDs have in obtaining legal representation and protection. Some of the issues are resource-related, so they are comparable to those faced by people who are economically disadvantaged.¹²⁸ The CRPD Committee, through its concluding observations, has also been emphatic on the need for legal representation and legal aid for PWDs to accessible and effective in with the requirements of article 13 of the CRPD.¹²⁹

In this respect, in Ethiopia, the cost of using judicial tribunals for instance hiring a lawyer is so high that lots of persons including economically disadvantaged PWD may not afford it. The only option for them, in such case, is to use the free advocacy service rendered through the government offices as long as they can prove that they have no sufficient means of income to hire a lawyer to handle their cases. This is being done according to Federal Advocacy Service Licensing and Administration Proclamation No.1249/2021 that provides every advocate who practices privately or works in a law firm either as a partner or as an employee has the obligation to provide pro bono advocacy service, for not more than three cases in a year, based on the simplicity or the complexity of each case. And the service is provided to the following persons to

¹²⁴ Stanley Fisher; Criminal Procedure for Juvenile Offenders in Ethiopia; Boston University School of Law; p.127

¹²⁵ United Nations Development Program, Access to Justice Practice Note (2004). United Nations Office on Drugs and Crime, Access to Justice: Legal Defense and Legal Aid (2006).

¹²⁶ Assessment of Legal Aid in Ethiopia: A Research Report & Proceeding of The National Workshop of Legal Aid Providers, Center for Human Rights Addis Ababa University, December 2013, pp 15 (here in after Assessment of Legal Aid in Ethiopia)

¹²⁷ *ibid*

¹²⁸ David Allen Larson (n88) p.225

¹²⁹ Wilson Macharia(n 35) p.22

those individuals who lack financial means to pay for such advocacy service; to charity organizations, civic societies and mass institutions; to those persons whom courts request the provision of pro bono advocacy service; to committees and organizations which work on the advancement, promotion and development of law and improvement of the justice system. And in practice this is usually done for civil cases.

The Federal Democratic Republic of Ethiopia (FDRE) Constitution and human rights treaties to which Ethiopia is a party also recognize an indigent's right to defense counsel at state expense where the interests of justice so require.¹³⁰ For example, according to Article 20(5) of the Constitution, those who are accused have the right to be represented by the legal counsel of their choosing and, in the event that they lack the financial means to do so and a miscarriage of justice would result, to receive legal representation at the expense of the state. That is currently being performed by the implementing institution the Office of Public Defenders which is operating under the Federal Supreme Court of Ethiopia.

PWDs in this situation, however, frequently have to rely on free or inexpensive legal services and therefore have fewer options for legal counsel. Therefore, it is vitally important to be aware of the issues related to the cost and accessibility of quality legal services.¹³¹

Even though PWDs are not specifically mentioned in these laws, it is reasonable to assume that Ethiopian law and practice regarding free legal assistance are in compliance with Article 13 of the CRPD because the right to free legal assistance is based on the guarantee of equality as it applies to adjudicative processes. Free legal assistance may be a suitable accommodation under article 13 CRPD to ensure effective access on an equal footing with others.

4.4. Equality and the Right Not to Be Discriminated in all community Affairs

Members of the community with disability should take part in all civil, political, economic and social affairs. They must participate actively in all staffs and barriers for the realization of this right must be avoided. Influence neither psychological nor physical should exist. In this respect, Article 25 reads 'all persons are equal before the law and are entitled without any discrimination

¹³⁰Hussein Ahmed Tura; Indigent's Right to State Funded Legal Aid in Ethiopia;p.1-2

¹³¹David Allen Larson (n88) p.225

to the equal protection of the law. The law guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status'. The Constitution's Article 9 declares that it is the highest law of the land. Any law, custom, or decision made by a government organ or by a public official that conflicts with this Constitution has no legal force. The duty to ensure constitutional observance and obedience falls on all citizens, as well as on state organs, political parties, and other associations and their officials. 'Article 13 of the CRPD refers to "direct and indirect participants" in a difficult-to-understand way. Evidently, the intention was for this text to make it clear that article 13 applies to everyone involved in adjudicative proceedings, including judges, jurors, witnesses, lawyers, and staff. This creates a completely new area that is only tangentially connected to preexisting procedural international human rights law. ¹³²With this prong, Article 13 safeguards the right of people with disabilities to engage in the aforementioned activities "On an equal basis with others" and obliges the states to make the necessary procedural modifications. For instance, this might call for modifications to the rules governing the court's evaluation of evidence in order to accommodate a judge or a juror who has hearing loss, changes to the rules governing the technical administration of the docket or the drafting of judgments to accommodate a clerk who is blind, etc. The goal is to eliminate the obstacles that prevent people with disabilities from performing the tasks that people without disabilities can¹³³

Related to this, in one case between Wesen Alemu v Amhara National Regional State Justice Professionals' Training and Legal Research Institute the plaintiffs are competent attorneys with visual impairments; however, the defendant refused to appoint them as judges and, against their wishes, hired them as public prosecutors. The 'long-established' practice of not appointing the Blind as judges was used by the defendant as justification because the position requires the ability to see witnesses and evidence presented by all parties involved in a lawsuit. The plaintiffs claimed that their constitutional right to choose their profession had been violated and took their case all the way to the House of Federation (which considers issues related to constitutional interpretation in accordance with article 83 of the FDRE Constitution).¹³⁴The House also

¹³² Markus Schefer, (n78), P.6-7

¹³³ Ibid

¹³⁴ Dagnachew B Wakene, * Priscilla Yoon** & TSION Mengistu, (n65) p.219-220

asserted that Article 25 and 9 of the FDRE Constitution has been violated. The decision also asserted that no convincing evidence was presented by the defendant which proved the appropriateness of the prohibition and that the nature of the work should be evaluated taking in to account equitable lodging, referring to the CRPD which is ratified by Ethiopia, as well as Right to Employment of Persons with Disability Proclamation No. 568/2008 and the abovementioned relevant provisions of the Constitution.¹³⁵

The plaintiff in Administration Justice Bureau v. Mekonen Teklu (2014), a person with visual impairment, invoked the Right to Employment of Persons with Disabilities Proclamation No. 568/2008, which places the burden of proof on the employer when a person with a disability files a lawsuit for disability-based discrimination in employment. The plaintiff alleged that his employer had discriminated against him because he was a prosecutor with visual impairment when they reduced his pay and moved him to a different position. The Federal Supreme Court Cassation Bench however ruled in favor of the defendant, holding that discrimination clauses under Proclamation 568/2008 could not be invoked by public prosecutors whose cases should be entertained by the Public Prosecutors' Administration Council established pursuant to Regulation 24/2007. In critiquing this decision, disability rights lawyers argued that the aforementioned Cassation Court ruling lacks clarity and is full of contradiction' in that: the Cassation bench skipped the meaning of 'government office', a term which was fundamental to decide the scope of application of Proclamation No.568/2008. The calculated crafting of the Proclamation to include all government offices by departing from the Civil Service Proclamation should have been given meaning.¹³⁶

4.5. The Status of Legal Awareness and Accessibility for Person with Disabilities

As discussed under chapter two this study, legal awareness is one pillar for the prompt realization of access to justice especially to PWD. These parts of the community are vulnerable to several human right violation and abuses. There for in order to equip them, having at least minimal knowledge can help them to defend themselves and through time they can influence the general community. As a result, they can combat injustice by educating others about their rights

¹³⁵ Ibid

¹³⁶ Ibid

and protections, which is essential to claiming them and seeking redress while being aware of their legal standing. In this regard paragraph 2 of article 13 of CRPD imposes a duty on the state to promote “appropriate training” to persons “working in the field of administration of justice”, in order to ensure the realization of paragraph 1 of article 13 (which is primarily focused on participation in the ‘legal system.’)¹³⁷The phrase "those working in the field of administration of justice" is particularly broad, as made clear by the example of "police and prison staff." Since applying the law when given the authority to do so is a form of administering justice, whether it pertains to criminal, civil, or administrative law, it would appear that it applies to all personnel charged with doing so.¹³⁸

Whereas the first paragraph of article 13 is primarily focused on participation in the ‘legal system’, the second paragraph of article 13 adopts a broader approach, requiring appropriate training of those ‘working in the field of administration of justice’. Although the majority of the CRPD Committee's concluding observations have emphasized the need for more training for a variety of professionals, more recent concluding observations, like those sent to New Zealand and Ecuador, have placed a special emphasis on training for the judiciary, legal professionals, and court staff.¹³⁹

Regarding this, Ethiopia’ implementation of the CRPD initial report from 2012 shows that some effort was made to coordinate trainings in partnership with DPOs and NGOs as part of the effort to guarantee access to justice through training of field personnel. According to the report, about 30 regular and traffic police officers in Addis Abeba received training in 2011 on how to treat people with disabilities during police investigations and how to deal with them on the streets and roads. More emphasis was placed on sexual assaults against disabled women during the training. Police officers made a commitment to share the knowledge they had learned after the training to others. Additionally, police officers and members of the Addis Abeba justice bureau received training on how to interact with people with disabilities when they show up at institutions as participants in civil and criminal proceedings, witnesses, or crime commission reporters.¹⁴⁰

¹³⁷ Markus Schefer,(n78),P.7

¹³⁸ Ibid

¹³⁹Ibid

¹⁴⁰ETHIOPIA; Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) INITIAL REPORT TREATY SPECIFIC DOCUMENT December 2012; Addis Ababa; p.34-36

In addition, the recently promulgated Federal Advocacy Service Licensing and Administration Proclamation No.1249/2021 that aims, among others, to establish a system whereby advocates undergo continuing professional training intended to keep them well informed of the latest developments in the form of new laws, legal concepts, and relevant local and international practices; under Article 26 states that any advocate has the duty to take training on the subject of law on aggregate from 24 up to 30 hours in a given year. It also states that the subjects to be covered by the training, the duration of the training, general training program procedures, training fee and other issues related with training shall be determined by the Directive to be issued by the Ethiopian Federal Advocates' Association established pursuant to Article 57 of the Proclamation.

This kind of continuing training and awareness creation mechanism including on local and international laws and practices could help lawyers stay current on the latest legal developments as well as sharpen their skills including laws on the right to access justice of PWDs. Besides as competent staff and professionals in the justice sector are needed to provide services for PWDs, incorporation through laws or administrative measures of good practices including law institutes with specific Disability Law programs, using technological advances that allow persons with speech and hearing disabilities to contact people with or without disabilities in all legal proceedings and facilitating additional disability law educational opportunities for students and practitioners to access resources about disability law on their own initiative should also be considered.

In contrast, according to article 35 (1), "each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the present Convention enters into force for the State Party concerned." The State party is required to submit follow-up reports to the Committee at least every four years after the initial report. A periodic report is a common name for the subsequent report. The Committee has the option to request reports at any time in order to respond to unique circumstances that arise outside of the four-year cycle. Though Ethiopia presented its initial report on 2012 after ratifying the convention on 2010, it has not submitted subsequent reports and this has been mentioned in Ethiopian Human Right Commission's annual human right conditions

report presented for the House of Peoples Representatives of Ethiopia for the Period June 2021-June 2022.¹⁴¹The Committee then requests Ethiopia to provide its two overdue periodic reports at once.¹⁴²This failure to comply with the reporting requirement of the Convention also makes difficult assessment of the exact extent to which the country complies with its other treaty obligations under the UNCRPD including its duty to promote appropriate trainings for those employed in the field of administration of justice.

4.6. Mechanisms for Implementation and Monitoring Implementation Rights of Person with Disability

The CRPD calls for the creation of national institutions and mechanisms for the application and oversight of the Convention at both the international and national levels. The designation of a focal point or focal points within the government introduces domestic implementation in this regard through Article 33, paragraph 1. Who may serve as a focal point (a ministry, a department within a ministry, a single person, etc.) is not specified by the Convention. Having a focal point at the very least means that the Convention should have a dedicated organization focused on national implementation rather than remaining solely an international issue under the purview of the ministry of foreign affairs.¹⁴³

The same paragraph mandates States to give serious consideration to naming or creating a coordination mechanism within the government to expedite steps toward the Convention's implementation. Although not required, such a coordination system might be useful. Disability-related issues have traditionally been handled by one ministry, such as the ministry of health or the ministry of social affairs.¹⁴⁴The possibility exists that the ministry of social affairs, rather than the ministry of education, will occasionally be in charge of a child's education. Such a setup tends to amplify exclusion and encourage segregation. Since the Convention covers all rights, many ministries should be given duties, including the ministries of the interior, justice, education, and labor, among others. A coordination mechanism can help make sure that duties are shared and the Convention does not

¹⁴¹Ethiopian Human Right Commission's annual human right conditions report for the period June 2021-June 2022;p.85

¹⁴² Ibid

¹⁴³The Convention on the Rights of Persons with Disabilities; Training Guide; Professional Training Series;No.19;United Nations Human Rights Office of the High Commissioner; United Nations; New York and Geneva; p.97-98

¹⁴⁴ Ibid

get mired down in one ministry. ¹⁴⁵Given that State parties to the Convention have different forms of government and are organized differently, the article relating to focal points and coordination mechanisms is flexible and therefore adaptable.¹⁴⁶

The Convention encourages the creation of focal points as well as a government-level coordination mechanism, though this is optional. The Ministry of Labor and Social Affairs is hereby empowered to carry out all acts necessary for the implementation of the Convention, according to Article 3 of the Convention on the Rights of Persons with Disabilities Ratification Proclamation No. 676/2010. Nevertheless, the Ministry of Women and Social Affairs was required by Article 36(1) of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1263/2014 to initiate policies, strategies, and laws for women, youth, children, persons with disabilities, elderly people, and other vulnerable groups in development; to prepare a detailed program compatible with the nation's overall development plan; and to implement the same upon approval(article36(1)(g)).The proclamation also states that one of the ministry's primary duties is to work in coordination with relevant agencies to prevent social and economic issues and provide essential services to vulnerable groups in society, especially the elderly and those with disabilities. (article 36(1) (g)).Pursuant to Article 36(1)(x) of this proclamation, the Ministry is mandated to implement the powers and duties entrusted to the Ministry of Labor and Social Affairs under Proclamation No. 676/2010.

A framework for promoting, defending, and overseeing the Convention is established in Article 33, paragraph 2. Examples include a national human rights institution or an office of the ombudsperson. The Paris Principles, also known as the "principles relating to the status and functioning of national institutions for the protection and promotion of human rights," which outline the requirements for independence and the duties of such monitoring institutions as agreed by the General Assembly, should be followed by this framework. ¹⁴⁷This is to ensure a truthfully independent and well-functioning national independent monitoring mechanism as required by the Convention.¹⁴⁸

¹⁴⁵ Ibid

¹⁴⁶ Ibid

¹⁴⁷ Ibid p.97-98 and p.98

¹⁴⁸ Ibid

Therefore, the Convention mandates that States maintain, strengthen, designate, or establish a framework to "promote, protect, and monitor" the implementation of the Convention in addition to designating the aforementioned institutions. State parties may decide to create unique disability mechanisms or appoint preexisting organizations to perform the monitoring. Furthermore, States parties are free to choose the best structure for their political and organizational context because article 33 does not specify a specific organizational form for the national monitoring framework.¹⁴⁹

The Convention also mandates that civil society, especially organizations that represent people with disabilities, participate fully in all aspects of this monitoring process, just as they are required to do when developing and implementing policies, programs, and other initiatives legislation to implement the Convention, in line with Article 4.¹⁵⁰ This reference to civil society raises at least two issues: (a) Civil society, in particular persons with disabilities and their representative organizations, should be involved in the monitoring process undertaken by the independent monitoring mechanism established under article 33 (and ideally also in the work of focal points and coordination mechanisms); (b) Civil society itself has a role to play in monitoring the Convention, independently of the other mechanisms established under Article 33.¹⁵¹

In this regard it is noted above that though Article 3 of the Convention on the Rights of Persons with Disability Ratification Proclamation No. 676/ 2010 had mandated the Ministry of Labor and Social Affairs to undertake all acts necessary for the implementation of the CRPD, under Article 36(1)(x) of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1263/2014 ,the Ministry of Women and Social Affairs is mandated to implement the powers and duties assigned to the Ministry of Labor and Social Affairs under Proclamation No. 676/2010.

Parliaments, as well as national courts and tribunals, can play a significant role in promoting and protecting the rights outlined in the Convention in addition to the specific monitoring, promotion, and protection framework established under the Convention.¹⁵² Labor inspectorates, school inspectors, and

¹⁴⁹ Ibid p.101

¹⁵⁰ Ibid

¹⁵¹ Ibid,p.98

¹⁵² Ibid

any other mechanisms with a role in rights monitoring are additional pertinent mechanisms. As part of their general monitoring responsibilities, they should keep an eye on the rights of people with disabilities. The trend in human rights treaties toward strengthening national monitoring of human rights is continued by the inclusion of an article outlining national implementation and monitoring structures and their roles. Prior to the CRPD, States parties were also required to establish national preventive mechanisms under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁵³

In this regard, the FDRE Constitution establishes that all governmental bodies at all levels—federal, state, and local—have a responsibility and duty to uphold the freedoms and rights guaranteed by Chapter Three of the Constitution.¹⁵⁴ These agencies have a responsibility to uphold the fundamental freedoms and rights guaranteed by the Constitution "in a manner consistent with the principles of the Universal Declaration of Human Rights, international covenants on human rights, and international instruments adopted by Ethiopia."¹⁵⁵

Similarly, Ethiopian courts at all levels should apply the CRPD, which has been adopted by Ethiopia, and in doing so, they are required to respect and uphold PWDs' rights, including their right to access justice. In recent years, there have been encouraging judicial trends that have emphasized the judiciary's obligation to invoke and apply both constitutional provisions and provisions of international human rights treaties that Ethiopia has ratified, particularly on the Cassation Bench of the Federal Supreme Court. Such developments would undoubtedly be beneficial for the implementation of PWDs' rights, including their right to access justice.¹⁵⁶ The explicit mention under Article 6(1) (a) of the Federal Courts Proclamation No.1234/2021 that Federal Courts shall settle cases or disputes, submitted to them within their jurisdiction on the basis of the Constitution, Federal Laws and international treaties to which Ethiopia is a party is also believed to play an important role in strengthening the trend of the judiciary to invoke and apply international treaties ratified by Ethiopia to settle cases presented to them.

¹⁵³ Ibid

¹⁵⁴ Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia; Proclamation No. 1/1995, Article 13(1) and 13(2)

¹⁵⁵ Ibid

¹⁵⁶ Aschalew Ashagre (2020), (n23) p.21-22

4.7. Adequacy of Existing Laws Relevant For Treatment and Protection of PWD

Article 4 of the CRPD makes specific reference to the obligation of States parties to adopt legislative measures as a matter of general obligation. Notwithstanding the degree of autonomy that States enjoy in deciding the strategies to implement the Convention at the national level, treaty bodies have consistently recognized that in many instances legislation is highly desirable and in some cases may even be indispensable.¹⁵⁷ State parties are required to "take all appropriate measures, including legislative action, to modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against persons with disabilities," according to Article 4 (1) (b) of the Convention. In accordance with article 4(1)(c), States are required to adopt appropriate legislative and administrative measures as well as to incorporate the protection and advancement of the human rights of people with disabilities into all of their policies.

It is evident from the Article 4 of the CRPD noted above that an important step in implementing the Convention is to review the national legislation and policy framework comprehensively so as to modify or abolish discriminatory laws and adopt new legislative measures to ensure future implementation.

In this regard, for example, the government's Charities and Societies Proclamation no. 621/2009 (CSP) tightened restrictions on foreign financial support for NGOs working for disability rights a year before Ethiopia ratified the CRPD in 2010. It stated, among other things, that promotion of the rights of people living with disabilities can only be undertaken by Ethiopian charities and societies, which may only receive ten percent of their funds from foreign sources.¹⁵⁸ Due to Ethiopia's lack of a culture of collecting donations for the advancement of rights, the removal of access to foreign funding eliminated opportunities for people with disabilities to participate in decision-making about policies and programs that directly affect them.¹⁵⁹ The CSP made clear the government's concern that NGOs would support a political agenda that the government had not

¹⁵⁷The Convention on the Rights of Persons with Disabilities; Training Guide; Professional Training Series; No.19;(n116) p.59-60

¹⁵⁸Sirak Akalu Iyassu; Fiona McKinnon; Disability Rights are Human Rights: Pushing Ethiopia Towards a Rights-based Movement ;) Northwestern Journal of Human Rights; Volume 19 Issue 1 Symposium: Human Rights and Access to Justice in Ethiopia 2021;p.57-58

¹⁵⁹ Ibid

approved. In order to do this, the government violated the CRPD by implementing the CSP, which was in place until it was repealed by Organizations of Civil Society's Proclamation no. 1113/2019 art. 87 (1).¹⁶⁰The CRPD was broken by the CSP itself. Given this, the government's recent repeal of the CSP as part of a comprehensive reform initiative gives rise to new hopes that the conversation will be elevated thanks to greater participation from civil society. This action is seen as a chance to resurrect a movement that questions antiquated social norms, calls for the enforcement of anti-discrimination laws, and advocates for the rights of people with disabilities as fundamental human rights.¹⁶¹

This reform also paves a way for implementation of Article 4 (3) of the CRPD, which requires State Parties to closely consult with and actively involve persons with disabilities in the development and implementation of legislation and policies to implement the Convention, and in other decision-making processes concerning issues relating to persons with disabilities. This is evident from the fact that organizations of persons with disabilities (OPDs) in Ethiopia are actively participating and working together with the Ministry of Women and Social Affairs in the drafting of the Comprehensive Disability Proclamation (CDP).

The Ethiopian Human Right Commission's annual human right conditions report presented for the House of Peoples Representatives of Ethiopia for the Period June 2021-June 2022 indicated that Ministry of Women and Social Affairs, with concerned organs, is working on drafting a Comprehensive Disability Proclamation.¹⁶²

Anonymous interview with a lead legal researcher at the Federal Legal Research and Training Institute of Ethiopia also reveal that as part of the effort being undertaken to draft the proclamation, a desk review of relevant documents, consultations with persons with disabilities, organizations of persons with disabilities (OPDs) including Ethiopian Center for Disability and Development (ECDD) and Federation of Ethiopian Association of Persons with Disability (FEAPD), relevant departments of Ministry of Women and Social Affairs and other ministries has been undertaken. The drafting of the Proclamation also take into consideration and reflect the purpose and fundamental principles enshrined in the CRPD. It is also intended that the

¹⁶⁰Organization of civil society's proclamation no.1113/2019 art 87(1)

¹⁶¹SirakAkaluIyassu (n133).p.57-58

¹⁶²Ethiopian Human Right Commission's annual human right conditions report for the period June 2021-June 2022;P.8 and 61

proclamation reflect in local language the commitments of Ethiopia for the implementation of CRPD.

This is encouraging because many states that have ratified the CRPD, such as Kenya, have passed the Persons with Disabilities Act (PDA) since 2003. PDA, the first disability-specific law in Kenya, creates a legal framework that forbids discrimination against PWD in all its forms. It was passed to uphold the rights of people with disabilities, guarantee equal opportunity, and establish pertinent institutions.¹⁶³

The National Council for People with Disabilities was established by the PDA. The Council's primary responsibility is to ensure that PWDs' welfare is improved. Designing policies to achieve equality for PWDs, ensuring accurate PWD statistics are captured by the National Census, issuing orders requiring building adaptations to be accessible for PWDs, providing advice on how to stop discrimination against PWDs, and encouraging others to follow suit are a few of these.¹⁶⁴

The Council also has the authority to issue adjustment orders and advise the minister on how to improve the welfare or rehabilitation of PWD in accordance with any treaty or agreement that may exist internationally. In order to ensure that the correct population of PWDs is counted, the Council is also required to collaborate closely with the national census. PWD must register with the Council for this reason.¹⁶⁵

Hence the effort by Ethiopia to enact a Comprehensive Disability Proclamations therefore promising to strengthen implementation of CRPD, including right to access justice of PWDs, by ensuring that the legal framework supports the convention's implementation pursuant to Article 4(1)(c) of the CRPD.

The "Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1263/2021" has mandated the Ministry of Women and Social Affairs, under Article 36, to work in collaboration with concerned organs, to prevent social and ecological injustice. This appears to be in compliance with Article 33, paragraph 1 of the CRPD, which introduces domestic implementation through the designation of a focal point or

¹⁶³Wachira Alice Mukami(n30) p.39-41

¹⁶⁴ Ibid

¹⁶⁵ Ibid

focal points within the Government. It also given power and responsibility to establish laws, strategies, and policies that protect women, children, young people, people with disabilities, the elderly, and other vulnerable groups in development; prepare a detail program compatible with the country's overall development plan; implement the same upon approval(article36(1)(g)).

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATION

5.1. Conclusion

Ethiopia has a legal framework on the right to access to justice of PWDs mainly containing the UNCRPD, the Constitution of the Federal Democratic Republic of Ethiopia and Right to Employment of Persons with Disability and the Federal Courts Proclamation No.1234/2021. Ethiopia has implemented these substantive laws that can serve as tools for the recognition and protection of PWDs' right to access justice, but these laws are not yet fully effective. Without the procedural and age-appropriate accommodations guaranteed by Article 13 of the CRPD, which ensure that PWDs can exercise their procedural rights derived from international human rights law and national law on an equal basis with others, they cannot be effective. The Civil and Criminal Procedure Code has not revised, with the aim of including procedural and age-appropriate accommodations to insure that PWDs uninterrupted and ancillary participants in all permissible events(as parties to the case, judges, witnesses, lawyers, or staff) can in fact exercise the procedural rights “on an equal basis with others.”This is despite the fact that Article 4 of the CRPD makes specific reference to the obligation of States parties to adopt legislative measures as a matter of general obligation and Article 13 of the CRPD stipulates this specific access to justice related obligation on state parties.

Despite the fact that the Federal Administrative Procedure Proclamation (FAPP) No. 1183 /2020has been enacted recently, it does not contain provisions which provide procedural accommodation for PWDs. Rather, the reference made by the proclamation stipulating that relevant provisions of the civil procedure code (CPC) shall apply on procedural matters not covered by the proclamation is discouraging given the fact that the CPC itself does not embody provisions that guarantee procedural accommodations for PWDs as embodied in the CRPD.

Ethiopian courts are not in adequate manner physically accessible to persons with disabilities due to failure to comply with the FDRE building proclamation. And information in courts, though there is progress in sign-language interpretation in federal courts, is not generally accessible materials (such as Braille documents and websites with screen readers)to PWDs with the extent envisaged in CRPD.

The Federal Advocacy Service Licensing and Administration Proclamation No. 1249/2021 made continuous training of advocates mandatory, and Ethiopia made some effort to organize awareness creation mechanisms and trainings in collaboration with DPOs and NGOs as part of the effort to ensure access to justice through training of personnel working in the field. However, the training of justice organs' staff, attorneys, court staff, and the police in general and on the law is still lacking.

On the other hand Ethiopia repeatedly fails to present implementation report of CRPD as per Article 35 of the Convention. This failure to comply makes difficult assessment of the exact extent to which the country complies with its other treaty obligations under the CRPD including its obligation with regard to right to access justice.

Moreover, Ethiopia has not ensured involvement of representative organizations of persons with disability in the development of the upcoming Comprehensive Disability Proclamation. However there are progresses in implementation of the right to access justice of PWDs as enshrined in CRPD by enacting Organizations of Civil Societies Proclamation No. 1113/2019 that repealed Charities and Societies Proclamation no. 621/2009 which restricted foreign donor funding of disability rights and disenfranchised many in a community that was dependent on foreign aid by stating that the promotion of the rights of people with disabilities could only be carried out by Ethiopian charities and societies, which may only receive 10% of their funds from foreign sources, among other restrictions.

5.2. Recommendation

- 1) Though Ethiopia has strong legal framework on the right to access to justice of PWDs mainly containing the UNCRPD, the Constitution of the Federal Democratic Republic of Ethiopia and Right to Employment of Persons with Disability and the Federal Courts Proclamation No.1234/2021, Ethiopia should incorporate a similar to how women's rights (article 35) and children's rights (article 36) are currently guaranteed by the FDRE Constitution, there is a substantive disability-specific provision in the FDRE Constitution that ensures constitutional guarantees on disability rights, including access to justice. The definition of disability in such disability-specific provision in the Constitution should also be broad and in line with the human rights based model of disability in accordance with the CRPD so as to include PWDs whowould otherwise fall outside the scope. This is

taking in to account the fact that a constitutional clause strengthens the justifiability of disability rights and implementation of PWDs right to access justice.

- 2) Ethiopia needs to revise the Civil Procedure Code and the Criminal Procedure Code with the aim of including procedural and age-appropriate accommodations to ensure that PWDs as direct and indirect participants in all legal proceedings (as parties to the case, judges, witnesses, lawyers, or staff) can in fact exercise the procedural rights incorporated from international human rights and national law “on an equal basis with others.”
- 3) Procedural and age-appropriate accommodations need not be narrow in their application by envisaging only the case where the accused or the witness reaches the court. Hence procedural accommodations need to envisage and take in to account the fact that legal proceedings start well before the trial stage; for instance in criminal cases including police arrests, detainment and interrogation of a suspect and a witness before the case is forwarded to the court for hearing.
- 4) Ethiopia (specifically the justice sector) should ensure all its courthouses are physically accessible for PWDs by complying with the building proclamation and by examining older buildings and proposals for new construction/hiring of buildings to use them as courthouses. In this regard inclusion in Federal Courts Proclamation (FCP) of similar specific and contextualized provision with Article 41(2) and (3) of Higher Education Proclamation No. 1152/2019 should be considered. This is a provision which clearly states that “Public or private higher education institutions shall, to the extent that situations and resources permit, relocate classes, develop alternative testing procedures and provide different educational auxiliary aids in the interest of students with physical disabilities and learning disabilities”. And “building designs, campus physical landscape, computers and other infrastructures of institutions shall take into account the interests of students with physical disabilities.” The Ethiopian justice sector also needs to ensure that accessibility standards consider all types of disabilities (as enshrined in CRPD) and provides procedural accommodations such as Braille signs, visual cues for the deaf, tactile and so on.
- 5) Ethiopia needs to ensure compulsory and regular training of justice organs’ staff including police on the rights of persons with disabilities.

- 6) Ethiopia needs to design and incorporate in its law a clear and systematic coordination mechanism within the government and with DPOs that the assigned Ministry needs to work with to facilitate action related to the implementation of right to access justice of PWDs in accordance with the CRPD. Ethiopia needs to fast track enactment of Comprehensive Disability Proclamation which contains details of disability rights including access to justice, anti-disability discrimination provisions, enforcement mechanisms and institutional set ups mandated to ensure the full implementation of that law.
- 7) Ethiopia should also adopt best practices from other jurisdictions and ensure that law schools and justice organs' professionals training institutes incorporate disability rights law as part of their curriculum.

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