



**ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
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**DISABILITY AND ACCESS TO JUSTICE IN THE
ETHIOPIAN FEDERAL COURT SYSTEM**

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DISABILITY AND ACCESS TO JUSTICE IN THE ETHIOPIAN FEDERAL COURT SYSTEM

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LLM Degree in Human Rights Law

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Declaration

I, *Yared Bogale*, hereby declare that this work is an original work and has not been presented in any other institution before. All referred materials are duly acknowledged.

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List of Acronyms/Abbreviations

ACHPR:	African Charter on Human and Peoples' Rights
ACHPR:	African Commission on Human and Peoples' Rights
ACHR:	American Convention on Human Rights
ACRWC:	African Charter on the Rights and Welfare of the Child
ACtHPR:	African Court on Human and Peoples' Rights
ADA:	American Disabilities Act
CAT:	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CED:	Convention for the Protection of all Persons from Enforced Disappearance
CEDAW:	Convention on the Elimination of All Forms of Discrimination against Women
CESR:	Committee on Economic, Social and Cultural Rights
CERD:	Convention on the Elimination of All Forms of Racial Discrimination
CPT:	European Committee for the Prevention of Torture and Inhuman and Degrading Treatment
CRC:	Convention on the Rights of the Child
CRPD:	Convention on the Rights of Persons with Disabilities
CSOs:	Civil Society Organizations
DPI:	Disable Peron International
ECHR:	European Convention on the Protection of Human Rights and Fundamental Freedoms
ECtHR:	European Court of Human Rights
FDRE:	Federal Democratic Republic of Ethiopia
FFIC:	Federal First Instance Court
IACtHR:	Inter-American Court Of Human Rights
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICF:	International Classification of Functioning, Disability and Health
ILO:	International Labor Organization
MDRI:	Mental Disabilities Rights International
MoLSA:	Ministry of Labor and Social Affairs

NGO:	Non-Governmental Organization
PWDs:	Persons with Disabilities
RI:	Rehabilitation International
SER:	Socio-economic Rights
UDHR:	Universal Declaration of Human Rights
UN:	United Nations
UNGA:	United Nations General Assembly
WBU:	World Blind Union
WFD:	World Federation of Deaf
WFDB:	World Federation of Deaf-Blind
WNUSP:	World Network of Users and Supervisors of Psychiatry
WHO:	World Health Organization

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CHAPTER ONE

INTRODUCTION

1.1 Abstract

After the adoption of the UDHR in 1948, human rights began to be recognized and standardized as an internationally binding norm. Subsequently different internationally binding human right instruments came to picture. As indicated in the UDHR, there is no discrimination among human beings in enjoying those rights recognized. Persons with disabilities are one section of any society who seeks the protection of rights recognized in different human rights instruments.

Up on developments of human rights conception worldwide, the world comes to have a specific human rights instrument that considers duly the special attention and needs of persons with disabilities. The Convention on the Rights of Persons with Disabilities (CRPD) adoption by the UN in 2006 brought a duty bearer on the state and right holder on person's with disabilities. One right of person's living with disabilities is their right to access to justice when their rights are infringed or when they serve the justice system in different capacity. Persons with disabilities are vulnerable group in exercising their right.

In Ethiopian context, according to the Central Statistics Housing and population census (2007) the number of persons with disabilities was 864,218 of which 464,202 are male and 400,016 Female. The disability population size is still debatable which is, partly attributed to the loose definition of disability.¹ With the existence of significant number of persons living with disabilities, it is widely seen that when they are trying to exercise their right to access to justice, they have to face numerous obstacles that hinder the equal exercise of right to access to justice.

This study is therefore an effort to show the right of person with disabilities to access to justice in the Ethiopian federal courts and to show the human rights implications of the situation, in Ethiopia on the rights of persons with disabilities. Moreover, the human rights

¹ ETHIOPIA, Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD), INITIAL REPORTS: December 2012, Addis Ababa, pp. 04

awareness of the service providers at the federal courts with regard to rights of persons with disabilities at the federal courts settings is also addressed in this study.

Key words: persons with disabilities, human rights and disabilities, access to justice, human rights conditions in Federal Courts of Ethiopia

1.2 Background of the research

Persons with disabilities face a variety of barriers in exercising their rights. According to World Health Organization's report, over a billion, corresponding to about 15% of the world's population comprise of persons with disabilities.² Eighty percent live in developing countries. Some women, men and children with disabilities are fully integrated in society, and are participating in and actively contributing to all areas of life. However, the great majority face discrimination, exclusion, isolation and even abuse. Many persons with disabilities live in extreme poverty, in institutions, without education or employment opportunities and face a range of other marginalizing factors. In some countries they are denied the right to own property and it is common for persons with disabilities to be denied the right to make decisions for themselves. The discrimination they face is widespread, cutting across geographical boundaries and affecting people in all spheres of life and all sectors of society.³

The discrimination emanates from the prejudices that see disability as an illness and society can help them by extending charity. With the evolution of disability and society, this attitude has been modified towards social and human rights-based approaches that see disability as a social construct and that PWDs undergo the limitations created by society.⁴

The United Nations addressed the issue of human rights and disability several times prior to negotiating and adopting the CRPD. In 1982, the General Assembly adopted the World Programme of Action concerning Disabled Persons, which promotes the full participation and equality of persons with disabilities in social life and development in all countries, regardless of their level of development. The General Assembly proclaimed the decade from 1983 to

² World Health Organization, World Report on Disability (2011) [hereinafter WHO], p. 261

³ United Nations Human Rights office of the high commissioner for human rights, Monitoring the Convention on the Rights of Persons with Disabilities, Guidance for human rights monitors, Professional training series No. 17, New York and Geneva, 2010, pp. 07

⁴ United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted by General Assembly resolution 61/106 of 13 December 2006, Preamble, Para (e)

1992 “the United Nations Decade of Disabled Persons” and encouraged Member States to implement the World Programme of Action concerning Disabled Persons during that period.⁵ Before the adoption of the Convention different bodies played a vital role in the drafting and pushing forward for the respect of disability rights through different mechanisms. Several specific non binding instruments have been adopted though they did not bring the solution in the recognition of the rights of persons living with disabilities. These instruments include the Declaration of the Rights of Mentally Retarded Persons (UNGA Resolution 26/ 2856 (XXVI), 1971); the Declaration on the Rights of Disabled Persons (UNGA Resolution 30/3447 (XXX), 1975); the World Programme of Action concerning Disabled Persons (UNGA Resolution 37/52, 1982); the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability (UNGA Resolution 44/70, 1990); the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (UNGA Resolution 46/119, 1991); ILO Recommendations concerning Vocational Rehabilitation of the Disabled (1955) and concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983); the Sundberg Declaration on Actions and Strategies for Education, Prevention and Integration (1981); the Salamanca Statement on Principles, Policy and Practice in Special Needs Education (1994); and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (UNGA Resolution 48/96, 1993).⁶

A World NGO Summit on Disability was held in Beijing in March 2000, resulting in the Beijing Declaration on the Rights of People with Disabilities in the New Century. Through this Declaration, the NGOs in the field of disability lent their moral authority to the idea of a disability-specific human rights treaty. In 2001, in the wake of the Beijing Summit, the General Assembly established an Ad Hoc Committee to consider proposals for a convention on disability. The aim is a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the work done in the fields of social development, human rights and non-discrimination (UNGA Resolution

⁵ From Exclusion to Equality, Realizing the rights of persons with disabilities, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol, United Nations Geneva 2007, p. 09.

⁶ Magdalena Sepúlveda, Theo van Banning, Gudrún D. Gudmundsdóttir, Christine Chamoun and Willem J.M. van Genugten, Human Rights Reference Hand book Human Rights Reference Hand book HUMAN RIGHTS REFERENCE HAND BOOK, University for Peace 2004, p. 377.

56/168, 2001). The Committee is at the first stages of work and held its second session in June 2003, assisted by the participation of several prominent global NGOs in the field of disability such as: Disabled Persons International (DPI); Inclusion International; Rehabilitation International (RI); World Blind Union (WBU); World Federation of the Deaf (WFD); World Network of Users and Survivors of Psychiatry (WNUSP); and World Federation of the Deaf-Blind (WFDB).⁷

Responses to disability have changed since the 1970s, prompted largely by the self-organization of persons with disabilities and by the growing tendency to see disability as a human rights issue. Historically, people with disabilities have largely been provided for through solutions that segregate them, such as residential institutions and special schools. Policy has now shifted towards community and educational inclusion, and medically focused solutions have given way to more interactive approaches recognizing that people are disabled by environmental factors as well as by their bodies. National and international initiatives such as the United Nations Standard Rules on the Equalization of Opportunities of Persons with Disabilities have incorporated the human rights of persons with disabilities, culminating in 2006 with the adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).⁸ The convention has optional protocol adopted on December 13, 2006, dealing with receiving and considering communications to the committee. It has 44 signatories. It is aimed at showing how PWD can communicate to the UN committee on CRPD established to observe the proper implementation of the CRPD when the right is infringed.

After all these human right instruments, the adoption of internationally binding human right convention, specifically on persons living with disabilities, changed the whole dimension of the protection of their rights from the base. CRPD's adoption introduced many rights to be recognized as human rights based on the needs of the persons with disabilities. As section of a society they have all the right to access to justice. The right is one cornerstone for maintenance of law and order in a society.

⁷ Supra note 6, p.377.

⁸ Understanding disability, world report on disability, p. 02.

The International Covenant on Civil and Political Rights (ICCPR) under article 14 and 16 and the European Convention on Human Rights (ECHR) under article 6 guarantee the right to a fair trial which is of fundamental importance in a democratic society. This right means that an individual must be able to have a matter brought before a court for determination without any improper legal or practical obstacles being placed in his or her way. However, this right also includes several key components which have derived from the jurisprudence of the European Court of Human Rights and the UN Human Rights Committee. Thus, access to justice is twofold: firstly, it encompasses the right to legal standing to bring cases, and, secondly, it includes the provision of remedies and mechanisms which must be accessible to people with intellectual disabilities and psycho-social disabilities, giving rise to, inter alia, the right to take part in proceedings in person or through a representative; the right to choose and appoint a counsel; and the right to appeal judicial decisions. Reasonable accommodations must be ensured in each process to equalize the degree of access to justice for persons with disabilities upwards. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) provides specific guarantees regarding access to justice for persons with disabilities.⁹

The CRPD under Article 13 provided the right to access to justice as:

Article 13 Access to Justice¹⁰

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

The CRPD recognized the rights of persons with disabilities to the full access to the justice system of any state party to the convention. The state party is also under different obligation

⁹ Access to Justice for People with Intellectual Disabilities and People with Psycho-Social Disabilities in Russia, Recommendations on legislative and policy measures required to achieve effective enjoyment of the right to access justice by all persons with intellectual disabilities and psycho-social disabilities in Russia, Mental disability advocacy center, pp. 07-08

¹⁰ United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted by General Assembly resolution 61/106 of 13 December 2006, available at www.un.org/disabilities/default.asp?id=150, accessed on August 18, 2015, Article 13.

to the realization of the right enshrined in the convention. The Principles stated under article 3 of CRPD, have important values to PWDs which include:

- “i. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- ii. Non-discrimination;
- iii. Full and effective participation and inclusion in society;
- iv. Respect for difference and acceptance of disability as part of human diversity and humanity; equality of opportunity;
- iv. Accessibility;
- vi. Equality between men and women; and
- v. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.¹¹”

These basic principles served as fertile ground for the exercising the rights enshrined in the Convention without any discrimination.

To strengthen the implementation of the Convention, an Optional Protocol which introduces two procedures, an individual communications procedure and an inquiry procedure, is adopted in 2006. The individual communications procedure allows individuals and groups of individuals in a State party to the Optional Protocol to complain to the UN Committee on CRPD that the State has breached one of its obligations under the Convention.¹² By the inquiry procedure on the other hand, if the Committee receives reliable information indicating grave or systematic violations of the provisions of the Convention by a State party, it may invite the State to cooperate in the examination of the information by submitting observations.¹³

In Ethiopian context, the FDRE constitution also recognized the right to access to justice for all under Article 37. PWDs are also section of the society who has the right to exercise the rights enshrined in the constitution. The constitution also recognized all international

¹¹ CRPD, Supra Note 9, Article 3.

¹² Optional Protocol to the CRPD, adopted by General Assembly resolution 61/106 of 13 December 2006, article 1(1).

¹³ Ibid. Article 6(1).

agreements ratified by Ethiopia, including the CRPD that guaranteed PWD right to access to justice, to be an integral part of the law of the land under article 9(4).

Against all these commitment, persons with disabilities are frequently observed, when their different rights are violated knowingly or unknowingly. The right to access to justice is also subject to violation as other rights are. In Ethiopian federal court system one can easily observe that it is as if persons with disabilities are not thought when the judicial system is established in every aspect; starting from the construction of the building to make easily accessible for persons with disabilities up to the trial court. The human rights conditions of persons with disabilities and their right to access to justice recognized in the convention are not consoling due to the fact that they cannot easily access the judiciary.

1.3 Literature review

There is little research on the human rights of persons with disability on their right to access to justice in Ethiopia. In fact there is also a dearth of literature in the areas of human rights and disabilities in general.

Dr. Eilinoir Flynn is one of the notable scholars who demonstrated the rights of PWD and implementation of their rights in accordance with the Convention on the Rights of Persons with Disabilities.¹⁴

World Health Organization's report on disability, United Nations reports and training materials on access to justice for persons living with disability are a useful resource. Other scholars that have written on access to justice rights of PWD and implementation of these rights include Ortoleva,¹⁵ Gerard Quinn and Theresia Degener,¹⁶ Luke Clements and Janet Read,¹⁷ Mairian Corker and John Davis,¹⁸ Melinda Jones and Lee Marks,¹⁹ and Suzy Braye.²⁰

¹⁴ E. Flynn, *From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities* (2011).

¹⁵ Stephanie Ortoleva, *INACCESSIBLE JUSTICE: HUMAN RIGHTS, PERSONS WITH DISABILITIES AND THE LEGAL SYSTEM*, *ILSA Journal of International & Comparative Law*, Vol. 17:2, 2011.

¹⁶ G. Quinn and T. Degener, *The current use and future potential of United Nations human rights instruments in the context of disability* (2002).

¹⁷ L. Clements and J. Read, *Disabled People and European Human Rights: A Review of the Implications of the 1998 Human Rights Act for Disabled Children and Adults in the UK*, (2003).

Though a little has been written on the right to access to justice of persons with disabilities and implementation of this right from the perspective of Ethiopian federal Courts, this research is aimed at exploring and finding out about it.

1.4 Major Research questions or theme

The major research question or theme that this research aspires to address is:-

- ✓ Whether the right to access to justice guaranteed by different local and international human rights instruments is effectively implemented to persons with disabilities with regard to the systems of the court, procedures, information and locations used in the administration of justice in Ethiopian federal courts.

1.5 Objective of the study

The main objective of the study is to assess the implementation of the right to access to justice of persons living with disabilities specifically at the federal courts. The specific objectives are:

- ✓ To clearly point out the human right of persons with disabilities with regard to access to justice;
- ✓ To explore international and regional instruments as well as domestic laws that govern right of persons with disabilities and the connection with access to justice;
- ✓ To critically examine whether or not those facilities in the federal courts are accessible to persons with disabilities as compared to international commitments entered by Ethiopia, to realize the rights of persons with disabilities;
- ✓ To find out whether or not access to justice is achievable for persons with disabilities at the federal courts
- ✓ To show areas where there is a gap between the law and the practice so that possible solutions are recommended to fill the gap.

¹⁸ M. Corker and J.M. Davis, 'Disabled children: (Still) invisible under the law' in J. Cooper (ed.), *Law, Rights and Disability* (2000).

¹⁹ M. Jones and L. Marks, 'Beyond the Convention on the Rights of the Child: The rights of children with disabilities in international law', *International Journal of Children's Rights*, vol. 5 (1997).

²⁰ S. Braye, 'Disabled children and social care' in J. Cooper (ed.), *Law, Rights and Disability* (2000).

1.6 Scope of the study

To make the work manageable the scope of the research is limited to assessing the implementation of the right to access to justice for persons with disabilities at the federal courts of Ethiopia, Addis Ababa.

Although persons with disabilities are entitled to every right just like others, they are not given equal opportunity of exercising their rights. In this paper it is not possible to discuss each and every right of persons with disabilities, rather because of limitation of space, time, finance and scope among their fundamental rights, the research dealt only with their "*right to access to justice.*"

On the other hand, to handle the practical study part of the research, the study exclusively focused on federal courts, Addis Ababa. In addition, Addis Ababa is selected because it is the capital city of Ethiopia where higher federal government judicial organs, non-governmental organizations working on persons with disabilities, a relatively civilized society where persons with disabilities come to courts to defend their rights and to serve the justice system in different capacity.

Therefore, assessing the implementation of right to access to justice with persons with disabilities at the federal courts in Addis Ababa, made it easier to presume what the situation would be in rural parts of Ethiopia where critical social problems in relation to persons with disabilities prevails in higher rate than in Addis Ababa.

1.7 Significance of the study

These days access to justice for persons with disabilities is getting global acceptance in its significance of effectively realizing the right to getting justice for persons with disabilities. This particular research focused on the right to access to justice for persons with disabilities and its implementation at federal courts. Hence, the study has the following significances;

- ✓ It identifies the intensity of the problems of persons with disabilities while exercising their right to access to justice.
- ✓ It comes up with recent and practical data on the availability of facilities provided by the federal courts.

- ✓ It would create awareness about the right to access to justice for persons with disability among persons with disabilities themselves, families, societies, justice organs etc.
- ✓ It highlights the possible area of work for the Federal Government and any concerned body to effectively realize the right to access to justice for persons with disabilities.
- ✓ It serves as a source for the Government to find possible solutions for those practical problems pointed out in the research, so that it could effectively realize the right to access to justice of persons with disabilities.
- ✓ Finally, it helps as baseline information for conducting further research studies in this area.

Generally, the research contributes a lot in identifying and pointing out the practical problems and recommending possible solutions so that right to access to justice of persons with disabilities will be effectively realized.

1.8 Research methodology

The research shall primarily be qualitative one where secondary sources like books, articles, documented facts and reports, web and other documents of relevance shall be assessed. Data shall also be gathered from concerned organs' available documents and through interviewing PWDs.

International human rights instruments, including but not limited to, the Convention on the Rights of Persons with Disabilities (CRPD) and other local legal frameworks on the rights of persons with disabilities will be given due emphasis to analyze data acquired.

1.9 Organization of the Study

The paper has five chapters. The first chapter is an introductory part which deals with background of the study, statement of problem, research questions, objectives and scope of the study, methodology and at last organization of the paper. Chapter two is literatures about access to justice and disability. Chapter three discuss the status of rights for persons with disabilities under different international, regional and domestic instruments and their right to access to justice. The fourth chapter deals with the implementation of the right to access to justice for persons with disabilities at federal courts. Finally, the last chapter, the conclusion drawn from the findings and possible recommendations are made.

CHAPTER TWO

ACCESS TO JUSTICE AND DISABILITY

2.1 Introduction

In recent years, access to justice is becoming one of the major human rights issues of the world. Justice as the name itself refers is a way of getting redress from the infringement of rights. It is a way of protecting and enjoyment of all other human rights. It is for all human beings who are in need of it regardless of a person's status. Persons with disabilities are one section of any society who comes to the justice system looking for redress and serve in different capacities; and when they are approaching the system it should reasonably accommodate them equally with other persons by removing all barriers to easily integrate to the system. In the coming section, the different meanings of access to justice for person with disabilities from different perspectives and literature reviews are discussed.

2.2 Meaning of Access to Justice

Access to justice is a broad concept, encompassing people's effective access to the systems, procedures, information, and locations used in the administration of justice.²¹ Persons with disabilities are usually subject to discrimination in access to fair and equal treatment before court of law, in effect not only entailing limiting the use of the justice organs but also limiting their ability to contribute for the justice system. This right also means that an individual must be able to have a matter brought before a court for determination without any improper legal or practical obstacles being placed in his or her way.²²

The term 'access to justice' for person with disabilities has been defined by different scholars and organizations according to different approaches. UNDP in 2005 proposed a definition as:

'Access to Justice is the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.'²³

²¹ Stephanie Ortoleva, "Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System," 17 ILSA J. Int'l & Comp. L. 281 (Spring 2011).

²² Supra, note 9, p. 08.

²³ Definition as cited on the journal 'Law, Social Justice & Global Development (An Electronic Law Journal), An analytical framework for empirical research on Access to Justice', Dr. mr. Adriaan Bedner & Dr. ir. Jacqueline A.C. Vel, Van Vollenhoven Institute for

The definition tried to include not only the formal institution of justice like formal courts and other institutions established for it, but also institutions that are not formally established to render justice when a case arises. This is one paradigm shift towards the conception of justice providing bodies.

CRPD negotiations 7th Session of the Ad Hoc Committee held on January 18, 2006 on the other hand defined:

‘Access to justice encompasses access to facilities; however accessible communications is also of paramount importance. In addition, access to justice includes ensuring that police and other officials modify their policies and practices where necessary.’²⁴

According to a prominent scholar on disability rights, Ortoleva, it is defined as

‘Access to Justice is a broad concept, encompassing peoples’ effective access to the systems, procedures, information, and locations used in the administration of justice. People who feel wronged or mistreated in some way usually turn to their country’s justice system for redress. PWD may be called upon to participate in the justice system as witnesses or as jurors in a trial. Persons with disabilities have often been denied access to fair and equal treatment before courts, tribunals, law enforcement officials, prison systems, and other bodies that make up the justice system in their country because they have faced barriers that not only limit the ability of persons with disabilities to use the justice system, but also limit their ability to contribute to the administration of justice to society and to the community as a whole.’²⁵

As observed from the above definitions forwarded by different persons from different perspectives but to address the same issue, access to justice mean peoples access to the systems, procedure, information and location of the justice rendering machineries in order to exercise the rights guaranteed by different laws. Persons with disabilities are not also unique from others that they have all the right to exercise their right trough the judicial machineries

Law, Governance and Development, Faculty of Law, Leiden University, the Netherlands, p.05.

²⁴ CRPD negotiations 7th Session of the Ad Hoc Committee held on January 16 - February 3, 2006, available at <http://www.pwd.org.au/issues/un-ad-hoc-committee-meetings.html#seven>, accessed on August 24, 2015.

²⁵ Supra, note 21, p. 284

of a country, so that the system, procedure and location should also reasonably accommodate equally with others without imposing additional barrier that hinder the exercising of their rights. In addition, PWDs do not only come to the justice machineries to get service, rather they can be part of the justice system who can serve as judges to render justice; that shows PWDs capacity is multi facial and vital in the justice system.

The term Access to Justice is not defined in international law and has been used in different ways in different contexts. Traditionally, the term refers to opening up the formal systems and structures of the law to disadvantaged groups in society. This includes removing legal and financial barriers, but also social barriers such as language, lack of knowledge of legal rights and intimidation by the law and legal institutions (the laws and the judiciary not easily accessible for PWDs). Access to justice has, thus, two dimensions; procedural access (having a fair hearing before a tribunal) and also substantive justice (to receive a fair and just remedy for a violation of one's rights based on relevant and available laws).²⁶

2.3 Mechanisms of Access to Justice

Access to justice, as mentioned above, has two dimensions; procedural access and substantive access to justice. These dimensions of access to justice also imply the mechanisms of access to justice.

2.3.1 Procedural Access to Justice

The procedural access to justice aspect is one mechanism in the right of access to justice. It implies fair hearing before a court of law. In order to have a fair hearing before a court of law, the procedural access to justice mechanism should include as a component the physical, structural, communicative/language barriers, information and advice barriers, prohibitive cost, uncertain outcomes, non appropriate court/tribunal setting.²⁷ The procedural barriers are basic elements for exercising the right in a fair way. Eliminating those barriers will help in maintaining the right of access to justice.

2.3.2 Substantive Access to Justice

The substantive access to justice, on the contrary, concerns itself with an assessment of the rights and claims that are available to those who seek a remedy.²⁸ The substantive part mostly

²⁶ Available at www.gaatw.org/atj/ , accessed on August 26/2015

²⁷ Supra note 21, pp. 284

²⁸ Ibid, p. 284.

refers to the substantive laws which are going to be applied to dispose the issue at hand. The substantive laws shall ensure the right to access to justice without discrimination. Laws shall be easily accessible for PWDs so that there is an equal ground to exercise those rights included in it. They should also promote equality of PWDs with others in applying them.

2.4 Definitions and models of Disability

2.4.1 Defining disability

Defining what disability is and what constitutes disability is always controversial. But defining it is a necessity in order to give all the properly necessary recognition and sometimes affirmative remedies for persons with disabilities.

Different international human right instruments and other municipal laws as well as organizations working on disability issues tried to include specific conditions of disability so that it will serve as a springboard for defining what disability is. The recent international convention on persons with disabilities, i.e., CRPD tried to include the following components as persons with disabilities:

‘Persons with disabilities include 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.’²⁹

As we can see above, the convention itself did not try to define what disability is in black and white rather tried to enumerate the types of disability and the components of it which could be considered as disability.

American with Disabilities Act (ADA) on the other hand defined disability by stating as under section 12101:

²⁹ United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted by General Assembly resolution 61/106 of 13 December 2006, available at www.un.org/disabilities/default.asp?id=150, accessed on August 26, 2015, Article 2 paragraph 2.

‘Disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job.’³⁰

By this definition a person is considered as person with disabilities if he/she has a record of having one of the stated elements of disability included in the definition. The disability might be permanent or temporary but it should entail the limitation of the person not to work fully to his/her capacity. The definition also included situations where persons themselves or other persons considering them as PWD.

The Ethiopian Proclamation No. 568/2008, Right to Employment of Persons with Disability, tried to define PWD as:

‘Person with disability means an individual whose equal employment opportunity is reduced as a result of his physical, mental or sensory impairments in relation with social, economic and cultural discrimination.’

The proclamation considers disability when there is a physical disability that can be visible to everyone or mental or sensory problems that can be easily recognized.

From all the above definitions what is common is that disability might be permanent or temporary but it should cause a limitation not to work to the full capacity of a person equally with other persons who have no disability.

2.4.2 Models of Disability

After defining what disability constitutes and is, the other issue to be raised is the models of disability. The long traditionally rooted thinking towards PWDs was that people become disabled just because it is the work of God/Nature and no one can help it. This kind of thinking is rampant especially in Ethiopia where there is no proper information access on disability. In the international arena, the same thinking was widely observed. Understanding the different models of disability is important to build positive attitudes and a better understanding of PWDs.

Later on, after the improvements of peoples’ thinking towards PWDs through different mechanisms, two basic models of disability were introduced. The medical and the social

³⁰ Ensuring Equal Access for People with Disabilities, A Guide for Washington Administrative Proceedings, May 2011, p. 03.

models of disability are two frameworks (amongst others) that provide contrasting ways of thinking about disability.

2.4.2.1 The Social Model of Disability

The social model of disability is primarily a result of society's response to PWDs but also of society's experience of the health and welfare system which made them feel socially isolated and oppressed. The denial of opportunities, the restriction of choice and self-determination and the lack of control over the support systems in their lives led them to question the assumptions underlying the traditional dominance of the medical model. Through the social model, disability is understood as an unequal relationship within a society in which the needs of people with impairments are often given little or no consideration.³¹ PWDs are treated unequally in the society that reduces their attention to the impairments to participate in the daily social life.

This model basically refers to the society's understanding and response to the PWDs and their disability issues. PWDs are excluded to participate from the social mainstream as a result of physical, organizational and attitudinal barriers of the society they are living with. Generally this model thinks that society is the problem. This model is a much better model in understanding the problems of PWDs from the society's side.

2.4.2.2 The Medical model of Disability

On the other hand in the medical model, disability is understood as an individual problem. If somebody has impairment it is understood as his/her disability. The medical model is also sometimes known as the 'personal tragedy model' because it regards the difficulties that people with impairments experience as being caused by the way in which their bodies are shaped and experienced.³² Historically WHO (1980) even gave definition based on this restricted perception.³³ It used the term 'abnormality' to refer disability which shows the belief that being with disability is becoming not normal.

³¹ Grant Carson, The Social Model of Disability, Scottish Accessible Information Forum (SAIF), 2009

³² Ibid

³³ World Health Organization (1980), A manual relating to the consequences of disease. Geneva, defined disability as follows:

Impairment: any loss or abnormality of psychological, physiological or anatomical structure or function.

Disability: any restriction or lack, resulting from an impairment of ability to perform any activity in the manner or within the range considered normal for a human being.

available at www.un.org/disabilities/default.asp?id=150, accessed on 26/09/ 2015.

This model thinks that the person is the problem. It defines and refers the problem from the perspective of individual disability problem. The medical model of defining disability is at odds with the daily experiences of disabled people that, in the absence of any cure for their physical condition, the impairment must be regarded as given a constant factor in the relationship between themselves and the society with which they attempt to interact.³⁴

When people such as policy-makers and managers think about disability in this individual way they tend to concentrate their efforts on ‘compensating’ people with impairments for what is ‘wrong’ with their bodies.³⁵

2.5 Obstacles of Access to Justice for Persons with Disabilities

Persons with disabilities have a dearth of problems in their day to day life activity. As part of society when they access the judicial system of their country they also face problems that hinder equality before the law. Some of these problems range from the substantive up to the procedural access to justice issues.

The substantive access to justice obstacles emanates from not assessing the existence of rights and claims available for PWDs. It mainly concerns the professionals who are responsible in taking care of cases to be disposed according to the available substantive law. Some substantive laws like the Ethiopian Right to Employment of Person with Disabilities, provide special privileges and sometimes may impose duty on PWDs in accessing to justice; and knowing and applying these laws for cases involving PWDs by giving due attention might help in the proper exercise of access to justice. The laws should also be accessible for PWDs so that they can easily refer what legal remedy they have.

Procedural Access to Justice Obstacle is the most commonly and widely known obstacle in the exercise of access to justice for PWDs. Guaranteeing fair hearing before court of law is one basic element of access to justice. To have fair hearing, courts and other judicial organs including police station and prisons should be physically accessible. They should be built by taking into consideration PWDs to easily access them. Appropriate court setting for PWDs, which PWDs can easily access and communicate with the concerned person, should be established to accommodate them.

³⁴ Supra, note 31, p. 07.

³⁵ Supra, note 31, p. 08.

Physical accessibility does not only refer to the building setup but also the closeness of these governmental organs to them. PWDs should not travel long distance to get these organs since by default they may not be able to travel longer distance because of their disability. They should be reasonably accessible nearby for them structurally and special governmental structure for PWDs might be in place to make easily accessible. By not making physically and structurally accessible, additional cost will be incurred on them so that the cost to access to justice becomes prohibitive. As most persons with disabilities are with low income due to different social and economical factors, imposing additional cost of travel will hinder them to exercise their right to access to justice. Sometimes court fees might also not be affordable for PWDs.

The other commonly existing obstacle is communicative/language barriers. This barrier is widely seen with persons having hearing and seeing disability. Persons with hearing disability problem come to the justice system in different capacity and they face problem in accessing it up on arrival. Person who can use sign language is not easily found to communicate with these persons, so that at least one appointment is given to communicate with them. The same is true with visually disabled persons. The court and other justice machineries are not accessible for them physically and substantively, i.e. laws are not accessed in brails to be read by them, buildings are not built to be easily accessible for them. In such cases, they need assistance from other persons which increases their cost to access the justice system. The problems are so inter related that the non fulfillment of one entails the non fulfillment of the other.

Information and advice barriers are also problem for PWDs. A person must be properly informed of their case before court or police station or other place where justice is administered. In the case of PWDs getting information and advice is a problem where the person providing information or advice cannot communicate with them in accordance with their disability issue. Injustice will occur when there is a PWD who is trying to access the justice machineries and who is not properly advised or legally supported.

CHAPTER THREE

INTERNATIONAL AND LOCAL LEGAL FOUNDATIONS OF ACCESS TO JUSTICE FOR PWDs

Introduction

PWDs are guaranteed in different local and international legal instruments to exercise their access to justice right equally without discrimination with other persons. Internationally and locally legal frameworks are set so that PWDs can access places where justice is administered in a right based approach. Below the major ones are discussed briefly.

3.1 International Legal Foundations to Access to Justice

3.1.1 Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD is the first international human rights Convention recognizing the rights of PWDs with regard to their right to access to justice. The instrument specializing on PWDs guaranteed this right under Article 13.³⁶ Since the right was a long time fundamental concern, inclusion of the right is a big step forward.

The CRPD also transformed the view of disability from the medical model towards the social model describing it as a condition arising from interaction with various barriers that may hinder their full and effective participation in society on an equal basis with others instead of condition arising from inherent limitations.³⁷ This view is observed at the definition of Disabilities.

CRPD also enumerates lots of general obligation on state parties to be fulfilled, they have to ensure that laws and practices do not discriminate against persons with disabilities, and they have to make sure to change those laws that do discriminate against persons with disabilities.³⁸

CRPD incorporates the dynamic, intersecting, and over-arching rights of “equality before the law”³⁹ such as, the importance of eliminating stereotypes of persons with disabilities,⁴⁰

³⁶ Supra, note 10.

³⁷ Supra, note 15, p. 287.

³⁸ Article 4 of CRPD.

³⁹ Id Article 5 on Equality and Non-discrimination.

accessibility,⁴¹ equal recognition before the law,⁴² and the concept of “access to justice” for persons with disabilities.⁴³ Additionally, the CRPD includes the right to education,⁴⁴ non-discrimination and reasonable accommodation in employment.⁴⁵

Article 12 of the CRPD recognized that persons with disabilities have the right to recognition everywhere as persons before the law and state parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Persons with disabilities also have the right to employment with reasonable accommodation in the justice sector as lawyers, judges, law enforcement officials, and other justice sector employment on an equal basis with others.⁴⁶ Often, a pre-requisite to the ability to exercise the right to equal employment opportunity, is the right to education,⁴⁷ since appropriate professional education is necessary to assume positions in the justice system.

3.1.2 Other International Conventions

Besides CRPD, different international human rights instruments also provided the right of PWDs access to justice right though not directly, since the right is intrinsic to all human rights treaties.

i/ UDHR- Formally access to justice was first used under UDHR though the term was not directly used.⁴⁸ In the different provisions of the document, it indirectly guaranteed the equal participation of PWDs in the justice machineries. Some of them are Article 7 concerning equality before the law and equal protection of the law,⁴⁹ Article 8 stating that all have the

⁴⁰ Id Article 8 on Awareness-raising.

⁴¹ Id Article 9.

⁴² Id Article 12.

⁴³ CRPD, supra, note 36, Article 13.

⁴⁴ Id Article 24 on Education.

⁴⁵ Id Article 27 on Work and Employment.

⁴⁶ Id Article 27.

⁴⁷ Id.

⁴⁸ Supra, note 15, p. 292.

⁴⁹ Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. Doc. A/RES/217(III), art. 7 (Dec. 10, 1948). Article 7 provides that “all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

right to an effective remedy⁵⁰ and Article 10 expressing the basic right of the individual to a fair trial in both civil and criminal proceedings.⁵¹

ii/ ICCPR- The International Covenant on Civil and Political Rights sets forth this right in Article 14, which states in pertinent part: “all persons shall be equal before the courts and tribunals.”⁵² ICCPR Article 14(2) (f), states with respect to criminal proceedings: “to have the free assistance of an interpreter (even at the expense of the government) if he/she cannot understand or speak the language used in court.”⁵³ ICCPR Article 16 states: “everyone shall have the right to recognition everywhere as a person before the law.”⁵⁴

In addition to the rights sets forth in the Convention, the Human Right Committee established for monitoring and evaluating the implementation or compliance of the Convention in its General Comment No 13 recognized communication importance in the judicial process by stating as:

*Subparagraph 3(f) provides that if the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defense.*⁵⁵

This recognition shows that the judiciary is under obligation for persons who have listening and vision problems to the provision of the requisite reasonable accommodation.

⁵⁰ *Id.* art. 8. Article 8 provides: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

⁵¹ *Id.* Article 10 provides: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and any criminal charge against him.”

⁵² International Covenant on Civil and Political Rights, art. 14, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967).

⁵³ *Id.* art. 14(2)(f).

⁵⁴ *Id.* art. 16.

⁵⁵ United Nations, Office of the High Commissioner for Human Rights, CPR General Comment No. 13: Article 14 (Administration of Justice) Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, pp. 13 (Apr. 13, 1984), available at <http://www.unhchr.ch/tbs/doc.nsf/0/bb722416a295f264c12563ed0049dfbd?Opendocument> (last visited Nov. 11, 2015).

The Committee further defines what interpretation of Article 14 equality before a tribunal has under ICCPR. Paragraph 3 states:

*The Committee would find it useful if, in their future reports, States Parties could provide more detailed information on the steps taken to ensure that equality before the courts, including equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary are established by law and guaranteed in practice. In particular, States Parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are independent, impartial and competent, in particular with regard to the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the judiciary from the executive branch and the legislative.*⁵⁶

iii/ ICESCR- The International Covenant on Economic, Social and Cultural Rights does not contain specific provision dealing with access to justice. But the Committee on ESCR recognized it as a right in its General Comment 9 stating that it is ‘indispensable’ to have an effective judicial or administrative remedy under paragraph 9.⁵⁷

The committee further goes on stating that civil and political rights violations and discrepancy and ESCR are for granted not warranted either by the nature of the rights or by the relevant Covenant provisions.⁵⁸ Many of the provisions in the covenant have the effect of immediate application.

iv/ CEDAW- The Convention on the Elimination of All forms of Discrimination against Women also provided provision with regard to access to justice through equality before the law. Article 15 requires equality between men and women before the law and the courts.⁵⁹ CEDAW

⁵⁶ Id. p 03.

⁵⁷ U.N. Econ. & Soc. Council, General Comment 9: The Domestic Application of the Covenant, pp 09–10, U.N. Doc. E/C/1998/24 (Dec. 3, 1998).

⁵⁸ Id. Paragraph 10.

⁵⁹ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180, art. 15 (Dec. 18, 1979). Article 15 provides:

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women

Committee, in its General Comment 21, explained the importance of the rights of women in the justice system as

*A woman's right to bring litigation is limited in some countries by law or by her access to legal advice and her ability to seek redress from the courts. In others, her status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs limit the woman's right effectively to pursue or retain her equal share of property and diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman's legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men and restricting women's ability to provide for themselves and their dependents.*⁶⁰

v/ CERD- The Convention for Elimination of Racial Discrimination in Article 5, also recognizes the right to equality before the law, the right to equal treatment before tribunals, and all other elements of the justice system.⁶¹

The Committee for the Elimination of Racial Discrimination (CERD Committee) General Comment No. 20 to Article 5 of the CERD states: “Many of the rights and freedoms mentioned in article 5, such as the right to equal treatment before tribunals, are to be enjoyed by all persons living in a given State”⁶² Additionally, the wording of the CERD

equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

⁶⁰ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS: EQUALITY IN MARRIAGE AND FAMILY RELATIONS, CEDAW General Recommendation No. 21, 13th Session, cmt. 7, (Apr. 2, 1994).

⁶¹ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), U.N. Doc. A/RES/ 2106(XX), art. 5(a) (Dec. 21, 1965). Article 5 provides: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice.

⁶² U.N. Rep. of the Comm. on the Elimination of Racial Discrimination, G.A. 51st Sess., at 124, U.N. Doc. A/51/18 (Sept. 30, 1996).

Committee's General Recommendation No. 25 usefully illustrates the notion of multiple discrimination based on race and other grounds.⁶³

The CERD commits its members to eliminate racial discrimination and promotion of understanding among all races. The major value it has brought is it outlawed racial discrimination. The Convention has gained near-universal acceptance by the international community, with fewer than twenty states yet to become parties. Most major states have also accepted the Convention's individual complaints mechanism, signaling a strong desire to be bound by the Convention's provisions. The Convention has had a significant impact on national legislation, with many states adopting legislation outlawing racial discrimination by the state. It has included provision as to the equal protection of persons before the law. The committee monitors the implementation of the convention. Its wide acceptance improved the recognition of PWDs in Ethiopia and elsewhere as human beings.

Ethiopia ratified ICCPR and ICESCR in 1993, CEDAW in 1981 and CERD in 1976. The UDHR is recognized in the FDRE constitution to be used for interpreting the human right section of the constitution in conformity with it.

3.1.3 Regional Treaties

In addition to the various international human rights and other treaties outlined above, comparable accesses to justice provisions are contained in the regional human rights treaties. The 1948 American Declaration of the Rights and Duties of Man (American Declaration) provides that every individual in the member states of the Organization of American States (OAS) is entitled to enjoy basic civil rights, including the right to resort to the courts to ensure respect for her or his legal rights.⁶⁴

The 1978 American Convention on Human Rights (American Convention) under Article 8(1) entitles every individual in the ratifying Latin American states to a “hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature,

⁶³ U.N. Rep. of the Comm. on the Elimination of Racial Discrimination, G.A. 55th Sess., at 152, U.N. Doc. A/55/18 (Oct. 17, 2000).

⁶⁴ American Declaration of the Rights and Duties of Man, O.A.S. Official Rec., OEA/Ser. L./V./II.23, doc 21 rev. 6 (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter- American System, OEA/Ser. L. V/II.82, doc. 6 rev. 1, art. XVII (1992).

and the determination of her or his rights and obligations of a civil, labor, fiscal, or any other nature.”⁶⁵

The due process rights in the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) resembles the ICCPR.⁶⁶ These conventions entitle everyone in the ratifying and acceding states to a fair and public hearing by law in determining civil rights and obligations, and any criminal charges within a reasonable time, and to an independent, impartial and lawfully established tribunal.

The American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities ensures for all persons with disabilities in ratifying states, that governments will take measures to eliminate discrimination in the law enforcement and administration of justice.⁶⁷

The African (Banjul) Charter on Human and Peoples Rights (African Charter) entitles every individual in a ratifying state to have her or his cause heard, and to be tried within a reasonable time by an impartial court or tribunal.⁶⁸

The 2004 Revised Arab Charter on Human Rights (Revised Arab Charter) proclaims that everyone is entitled to a fair trial that affords adequate guarantees before a competent and independent court.⁶⁹

3.2 Local legal foundation of Access to Justice

In Ethiopian context, access to justice is guaranteed in different laws of the country. The supreme law of the land, i.e. the constitution, as a source of every other laws of the country, guaranteed access to justice right in it. Other relevant laws that we will see below also included some provisions with regard to access to justice for PWDs.

⁶⁵ American Convention on Human Rights, Pact of San Jose, Costa Rica, art. 8(1), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, OAS/Ser. L/V/I.4 rev. 7 (*entered into force* July 18, 1978).

⁶⁶ Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2, Nov. 4, 1950, 213 U.N.T.S. 222, E.T.S. No. 5 (*entered into force* Sept. 3, 1953).

⁶⁷ Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, AG/RES. 1608 (XXIX-O/99), art. III(1)(a) (June 7, 1999).

⁶⁸ African (Banjul) Charter on Human and Peoples’ Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art. 7(1) (June 27, 1981) (*entered into force* Oct. 21, 1986).

⁶⁹ League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 INT’L HUM. RTS. REP. 893 (2005) (*entered into force* Mar. 15, 2008); *see also* Don Fleming, *Legal Aid and Human Rights*, INT’L LEGAL AID GROUP CONF., June 6–8, 2007, *available at*

http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/Antwerpen_2007/Conference_Papers/Legal_Aid_and_Human_Rights.pdf (last visited Nov. 28, 2015).

3.2.1 FDRE Constitution

The FDRE constitution as a supreme law of the land included many vital constitutional principles and provisions governing for the protection of basic human rights. One of these rights is access to justice. It is meant for all. The constitutional provisions are mostly in line with the international human right instruments and sometimes copy of them.

Article 37 of the constitution is a base for maintaining access to justice for PWDs. It guaranteed that everyone has the right to bring a justiciable matter to and to obtain a decision or judgment by a court of law or any other competent body with judicial power in a group or individually.⁷⁰ The provision guaranteed the right to all without discrimination and PWDs are also one beneficiary from this constitutional principle as a section of the society.

On the other hand equality before the law is stated in the constitution stated as all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. With this respect, the law guaranteed 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.⁷¹ Equal treatment of all persons without any ground of discrimination is guaranteed before the law.

The constitution further gave recognition for all international instruments in which Ethiopia is a party. All international instruments Ethiopia is a party are an integral part of the law of the land.⁷² In connection with this, since Ethiopia is a party to the CRPD, the state is under duty to the protection of PWDs right to access to justice as enshrined in the convention. Besides, the constitution provides that, all fundamental rights and freedoms included under chapter three of the constitution shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.⁷³ This means since access to justice is under chapter three; it should be interpreted in a way that it should guarantee the right of PWDs in exercising their right to access to justice enshrined in the CRPD.

PWDs are also guaranteed of their economic, social and cultural rights. The State shall, within available means, allocate resources to provide rehabilitation and assistance to the

⁷⁰ The Constitution of the Federal Democratic Republic of Ethiopia, Article 37.

⁷¹ Id, Article 25.

⁷² Id, Article 9/4/.

⁷³ Id, Article 13/2/.

physically and mentally disabled, the aged, and to children who are left without parents or guardian.⁷⁴ By assisting PWDs, it will create a capacity for them so that they will have an access to quality legal aid service since their economic capacity is enhanced through assistance.

Other provisions of the Constitution that guaranteed the right to access to justice for PWDs is the principle of rule of law included in the preamble and Article 25 that made everyone is equal before the law. Besides other provisions like establishing independent judiciary under article 78; rights of person arrested and rights of person accuses under Article 19 and 20 respectively recognized the equal right to access to justice for all.

3.2.2 Other Proclamations

Other legal protection for PWDs in exercising their right to access to justice is the promulgation of different proclamation.

i/ Proclamation No. 676/2010 Convention on the Rights of Persons with Disability Ratification Proclamation

Ethiopia as a signatory to the CRPD since June 1, 2010, is under duty to be obliged by the duties of a state party. To do so the country ratified the convention in 2010 so that it will have a strong direct implementation effect. The Ministry of Labor and Social Affairs is empowered to undertake all acts necessary for the implementation of the Convention.⁷⁵ The Proclamation came in to force after it is published in the Federal Negarit Gazeta according to article 4. By this proclamation it ratified in whole the CRPD so that a strong duty bearer and duty holder relation is already established.

ii/ Proclamation No. 25/1996 Federal Courts Proclamation

This is a proclamation in which federal courts are established. It has also many amendments in which some provisions are included. The proclamation included some provisions which have vital effect on exercising right to access to justice for PWDs. Article 16 states the Powers and duties of the Federal Supreme Court president. One of the duties is organizing public defence office.⁷⁶ The main duty of this public defence office is to represent persons who are accused of committing a crime in front of court in order to protect their legal right. It is one of the rights of persons accused in the FDRE Constitution too. An accused person will

⁷⁴ Id, Article 41/5/.

⁷⁵Convention on the Rights of Persons with Disability Ratification Proclamation, Proclamation No. 676/2010, Article 3.

⁷⁶ Proclamation No. 25/1996, Federal Courts Proclamation, Article 16 (j).

have a right to be represented by a legal councillor of his choice or by a councillor at the expense of the government.⁷⁷ This is to discard miscarriage of justice. In doing so since PWDs could come to the justice system as an accused; they will have all the right to use the organized public defence office free of charge and be represented with a competent legal councillor who has no communication barrier with PWDs.

The other provision in this proclamation is that article 25 dealing with language. It states that the working language of the federal courts is Amharic, and in case a person who cannot understand Amharic comes, the court shall provide an interpreter.⁷⁸ This provision does not only talk about Amharic language; rather it should be interpreted to include other languages of PWDs like sign language. If PWD come and cannot speak any language, definitely the court will be under duty to provide an interpreter with a knowledge of sign language for the sake of justice. The provision shall be interpreted broadly to include PWDs language too so that courts are also accessible to all equally.

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

It is a proclamation promulgated for the employment right of PWDs. It has two major contributions in exercising access to justice for PWDs. The first is it shifted the burden of proof to the employer that there is no discrimination in employing PWDs if a person brought a suit on that ground under article 7; and the second is PWDs can be represented by associations to bring action on behalf of their members under article 10.

⁷⁷ Article 20 (5) of FDRE Constitution.

⁷⁸ Article 25 (2) of FDRE Constitution.

CHAPTER FOUR

ACCESSIBILITY OF ETHIOPIAN FEDERAL COURTS FOR PERSONS WITH DISABILITIES

Introduction

Ethiopia, since the establishment of federal form of government with the advent of FDRE Constitution in 1995, introduced a new court structure in the history of the nation. Regional states and federal government with their own distinct power and duty is established. Autonomous nine⁷⁹ regional states and two federal cities with power of establishing their own Legislative, Executive and Judiciary branch has been established. The federal government also have a judicial organ that has a power up to reviewing decisions of regional courts final decision in their cassation bench.

4.1 Structures of Ethiopian Federal Courts

The structure of federal courts has been set out by proclamation promulgated after the adoption of the FDRE constitution. Proclamation No 25/1996 with its subsequent amendments established them. Before that the structure and jurisdiction was governed by the different substantive and procedural laws of the country.

The proclamation was specifically promulgated to determine the structure and jurisdiction of federal courts. Accordingly it has three tiers of court structures; Federal Supreme, High and First Instance Courts. Each of the three levels of courts has their own jurisdiction given by law. They have criminal and civil jurisdiction in the federal cities Addis Ababa and Dire Dawa. The Federal Supreme Court cassation bench has the jurisdiction over cases decided finally by the regional supreme courts cassation benches and Federal Supreme Court.

Federal courts are located in different parts of Addis Ababa and Dire Dawa. In some regions federal courts are established to entertain federal matters; and in some regional states the regional state courts entertain federal matters through delegation given by Article 78 (2) of the FDRE Constitution.

⁷⁹ Article 47 (1) of FDRE Constitution

In the federal cities; Addis Ababa and Dire Dawa; there is one Supreme Court located in Addis Ababa. The federal high court has three benches in Addis Ababa and one in Dire Dawa; and finally the federal first instance court has ten benches in Addis Ababa and one in Dire Dawa city. It is tried to distribute, especially the first instance court, to be established in the all Addis Ababa administrative units called 'sub-city'. The structuring of federal courts is meant to become easily accessible for the people and get proper justice without distance problem.

4.2 Accessibility of Ethiopian Federal Courts for PWDs

Accessibility of courts includes different dimensions. Accordingly the different aspects of Ethiopian federal courts accessibility for PWDs are discussed below.

4.2.1 Procedural Accessibility

a/ Physical accessibility

The different levels of Federal Courts are located in areas where they found building to rent. Few acquire their own building.

FEDERAL SUPREME COURT

The federal supreme court is located around 'sidist kilo' in Addis Ababa. Physically since it is found at the nearest road side where public transport service is easily accessible, it got one advantage. On the other hand, the compound of the court is not easy for walking and going to court rooms. The asphalt road in the compound is not easy for wheelchair users and blind people. Since the building itself is old and not built purposely for court purpose, benches and offices where the judges reside is not easily accessible for PWDs. There is no elevator in the buildings and this made it difficult to reach the courtroom that will impede access to justice right of PWDs.

FEDERAL HIGH COURT

Federal High Court is located in three places in Addis Ababa and one in Dire Dawa city. The three Addis Ababa benches are located at 'Lideta', recently around 'Sebara Babur' in Arada sub-city and 'sumit' area in Bole Sub-city. All benches are located at the nearest road sides that made easily accessible with public transport.

The inside of the compound of 'lideta' bench is somehow good with its asphalt roads after it is maintained in the last two years. The building is accessible for PWDs especially for wheelchair users and blind persons. Currently they have elevators built after long time but not started working. This made accessibility of the building difficult.

The ‘sebra babur’ bench is located at the main roadside. The building is mainly built for commercial purpose not for becoming court that made it difficult to be easily used by PWDs. It has no compound and the existing compound itself is not easy for wheelchair. It has no elevator and PWDs cannot access the building totally. .

The ‘Bole bench’ is relatively much better than even the head office at ‘Lideta’. It is located at the nearest road side. The building is intentionally built for court purpose by the FFIC. It has elevator and easy to access the building by wheelchair. It is built taking into consideration PWDs.

FEDERAL FIRST INSTANCE COURT

FFIC has ten benches in Addis Ababa and one in Dire Dawa. All the Addis Ababa benches are found in the ten different sub-city administrative units. Compared with other levels of federal courts, FFIC is much better in having its own building built for court service. In four sub-cities including the head office; i.e. ‘Qirqos’, ‘Bole’, ‘Yeka’ and ‘Lideta’; they have new building for court purpose. All these newly built buildings are physically accessible for PWDs. They have elevators and easy for wheelchair users.

The other six benches of FFIC are found in a building where they first built for commercial purpose with rent. These benches are not suitably accessible for PWDs physically. Some have no easy entrance road to the compound and others do not have any accessibility stairs for wheelchair users to the court room itself; and others have no elevators at all. This makes accessibility of FFIC for PWDs difficult and entail serious problem in exercising their access to justice right.

With regard to signs for PWDs and suitable toilets, the federal courts have a very serious problem. There is no sign for them to show where to go and how to access the buildings, and no parking place for them in any of the federal courts. There is no toilet that can be easily used by PWDs. If someone has to spend the whole day at any of the federal courts, he/she cannot use toilets since there is no toilet appropriate for them.

b/ Communicative/Language Accessibility

The other major accessibility issue in Federal Courts of Ethiopia is Communicative accessibility for PWDs. This problem is very widely seen in all tiers of federal courts. Any

person needs to be informed properly of the service he/she is getting from Courts. One barrier in getting this information for PWDs is language.

Persons who have disability in speaking are mostly affected by this problem. Almost all federal courts have no sign language interpreter. This will bring access to justice problem for PWDs very serious. These people come to the justice system in different capacity; as victims, witnesses and in other capacity of vital importance for the justice. They don't get proper information from the court because of language problem. This will increase their cost by trying to get another lawyer/person who can help them even though they are professional lawyers (blind persons can be professional lawyers). It also increases their frequency of coming to the court until the court finds a proper interpreter even at the expense of the government. It indirectly increases the cost and delaying of files to be decided so that their right to speedy trial will be in question.

In one case, where I was working on the bench as a Judge, the accused came to the FFIC 'Kolfe Qranyo' bench. He was charged by the public prosecutor of committing crime of theft. He is then brought before the trial court. He is served with the charge and suddenly the court noticed he is unable to hear and speak. There is no chance of getting a sign language interpreter at that moment. He cannot even be asked about his bail right. After asking the public prosecutor, he was released on bail by giving an order to the registrar to assign a sign language interpreter for the next adjournment. Fortunately on the next adjournment the judge who was entertaining the case have a little knowledge of sign language and at least little communication is established.⁸⁰ In that adjournment even the registrar could not assign an interpreter because it was unable to find one easily.

In another case, the plaintiff has difficulty in listening and speaking. She cannot easily able to express what she wanted. On the first adjournment it was difficult to communicate and I was totally dependent on what she has written on her pleading and cannot communicate her in

⁸⁰ Criminal Case File (RTD) No.48784, Case between Public Prosecutor and Ato Amanuel, FFIC Kolfe Qeranyo Bench. The father's name is intentionally left for privacy reason. The writer was working on criminal bench as a Judge at that time.

words. Fortunately since her case was judgement execution, it was done according to her pleading in her papers.⁸¹

In all these barriers, one significant improvement the FFIC trying to make is, establishing special bench and court room specifically for persons with mental health problems, which helps the proper administration of justice by understanding their case specific mental disability issues. There was preparation to establish the special bench, but not started yet. At least there is a tendency and aspiration to have this special bench that needs to be strengthened.

c/ Financial Accessibility

Ethiopian federal courts financial accessibility is also another determining issue in access to justice for PWDs. It is to mean the cost PWDs pay to travel to the institutions, the cost of legal advice, sometimes cost to get an interpreter to the language they can understand and other. Ethiopian federal courts, with this regard, are difficult to be accessible.

Physically, with the exception of few of them, they are located in a place where one should travel longer distance to reach them. Relatively the FFIC is more accessible since they are found in the ten sub-cities of Addis Ababa. Currently the Federal High Court is expanding by establishing different benches in Bole and Arada sub-cities. Finding them in a very specific and far place makes accessing them costly for PWDs, i.e. one should pay higher transport cost to reach at a bench.

On the other hand since the laws and other facilities are not found properly suitable for PWDs, even though one is aware of the laws of the country, it will make difficult to bring his/her case to courts simply because the laws are not accessible. This situation is clearly seen with persons who have visual disability. One blind or visually disabled person cannot argue by citing the laws since the laws are not available in brails. This will incur additional cost in hiring lawyer or another person who can help.

⁸¹ Civil (Judgment Execution) Case File No.49776, Case between W/ro Miraf and Ato Dawit, FFIC Kolfe Qeranyo Bench. Their father's name is intentionally left for privacy reason. The writer was working on the bench as a Judge at that time.

4.2.2 Substantive accessibility

The substantive access to justice issue is another vital issue of PWDs. It refers to legislative remedies available for PWDs in exercising their right to access to justice. With this connection Ethiopia has made significant progress by adopting the CRPD. Not only adopting the convention, there are also laws specifically meant for PWDs.

The first substantive accessibility foundation for access to justice is the Constitution. Access to justice for PWDs is guaranteed equally with others under article 37. It means that there is no discrimination in exercising their right. With this regard there is no discrimination in the Ethiopian Federal Courts.

Other specific law is Proclamation No, 568/2008, Right to Employment of Persons with Disability, promulgating the right of PWD in connection with their employment right. Two important procedural provisions in the proclamation of the employment right of persons with disabilities are included. This provision deals with the burden of proof in case of discrimination and the right to bring court action by disability associations in cases of violation of the rights of their members under Article 7.

The provision is a clear deviation from the conventional evidence rule that states the one who alleges something has to prove it. Here PWDs are expected to bring a suit to court on the grounds of discrimination on employment because of his/her disability. It is the defendant or employer who is expected to prove the non-existence of discrimination by producing evidences. The rationale is to protect PWDs from systematic discrimination by employers in which PWDs cannot easily prove it. This provision removed big barrier in exercising access to justice right.

Again article 10 of the same proclamation reaffirms the right of disability associations to bring action on behalf of their members.⁸² Such an express provision of law on competence of associations to bring action representing their members provides more opportunity for victims of violation of right to seek justice by reducing their financial burden and overcoming the difficulty in getting lawyers. The federal courts have no problem in applying this law though no association came with a case representing its member as far as I know.

⁸² Id article 10.

The other substantive accessibility foundation for access to justice in Ethiopia is building proclamation. It states that any construction of public building shall include a means to access to PWDs.⁸³ This clear provision is available and the federal courts shall be built taking into account the Disability accessibility issue. With the existence of this clear law there are considerable amount of buildings in Addis Ababa that have no access to PWDs. Federal courts use some buildings by renting from the owners and except those built by the FFIC, all rented buildings have problems with regard to accessibility for PWDs. They have no elevators, not suitable for wheelchair users; and those that has elevators some are fixed not to stop on the needed floor so that anyone who want to go to the needed floor should use the stairs built for persons who have no disability problem. So when courts are renting buildings, they have to make sure that the building is accessible for PWDs in all aspects.

In an interview with Ato Fikadu Tsega, who is PWD and working in Federal Ministry of Justice and board member in an association working for PWDs, he mentioned that many buildings of courts, police stations and public prosecutor offices do not have ramp for wheelchair users, no elevators and located in very far places so that accessing them is difficult. Those elevators found in some buildings do not stop at the floor needed, and no means of informing for blind persons which floor they are.

In another case an association for PWDs was the defendant and the representative of the association was wheel chair user, he/she went to submit their pleading and the court have no means to accommodate the wheelchair users and some other person has to come to submit their pleading.

It is rampant that there is no sign language interpreter. He mentioned that in some cases at least he can go to the lower floor to meet a person who has physical impairment; but if there is no sign language interpreter, it is difficult to communicate. In one case, there was a woman who came as a rape victim, he was about to ask what happened and she only knew sign language and he is blind, the communication was by writing, she writes and someone will read for him and he will tell what to do and written and given to her to read it. It took so long time to know her problem and very tiresome.

An effort was made to teach sign language some personals of Ministry of Justice in collaboration with Addis Ababa University at week end days, but since it was volunteer based and had no incentive it did not go far and brought any fruit.

⁸³ Article 36 of Proclamation No. 624/2009, Ethiopian Building Proclamation.

Laws are not accessible for PWDs, they are not found in brails. Some effort was tried with the printing press that is printing all proclamations of Ethiopia on ‘negarit gazetta,’ but since it is profit motive printing press, it showed little willingness to publish laws in brails. Little effort is made by Human Rights Commission and House of Federation in printing and distributing few copies of the FDRE Constitution and relevant human right instruments in brails. In other few cases he mentioned, defendants asked the charge to be submitted to them written in brails and the court recognized their right but he mentioned that he did not know whether they were served or not; but the right based issue is there.

In Ethiopia different proclamations are there to mainstream disability in their day to day working activity starting from the planning, but practically there is no such thing in governmental offices. Disability issues are highly dependent on high government official’s willingness in Ethiopia rather than right based approach. Even when laws are promulgated, the concerned organs do not give due emphasis for PWDs in the laws. Those who are PWDs and member of Legislative are also more influenced by their party politics and stop working on disability issues in the legislative process. The associations working on PWDs are not strong enough to make an influence on government to properly dispose its duties imposed by law.

CHAPTER FIVE

CONCLUSIONS AND RECOMENDATIONS

5.1 CONCLUSION

Justice can only be accessed if it is shared equitably among citizens. This paper analyzed the issue of implementation of CRPD right to access to justice in Ethiopia. The core assertion of the paper was that though Ethiopia has ratified CRPD, much has not been done to realize such rights. With few efforts to include disability issues in their access to justice right, much is left to comply with the CRPD. As courts are holy center of justice for human beings, people who come looking for justice should be served what is justice in the eyes of the law. PWDs with their special condition need protection from the system as enshrined in the CRPD and other local legal frameworks. It is actually hardly possible to expect codes like that of Ethiopia promulgated so many years ago to approach disability in the modern sense of the term.

Much has to be done in Ethiopian federal courts to be equally accessible for all citizens without regard to the disability issue of a person. Adopting the CRPD is one way of recognizing the rights of PWDs. But in order to make the Convention implemented properly, some activity is required from the government side. As indicted under article 13 of CRPD, to make the justice machineries accessible for PWDs, the state party has to do and pass through some activities that will guarantee the right to access to justice for PWDs.

Making federal courts accessible, affordable, timely and effective is one way of guaranteeing access to justice for PWDs. This is implemented through different measures taken by the government. Some of the problems of PWDs are also recognized by the government of Ethiopia as issues to be solved and reported as shortcomings to the UN in implementing the CRPD.⁸⁴

⁸⁴ Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) INITIAL REPORTS: December 2012, Addis Ababa, p, 51.

5.2 RECOMMENDATIONS

The following practically implementable recommendations are suggested by this paper in order to make Federal Courts properly accessible for PWDs.

- ✓ **Having Building easily accessible for PWDs-** PWDs need special accessibility mechanisms towards buildings to enter. Federal Courts either the newly built or the rented ones should have a mechanism of being accessible to them. They should have a way to be used by wheelchair users and elevators that can take a person to any floor needed. Besides the law on building (proclamation 624/2008 article 36) that obliges the owner of a building to make easily accessible for PWDs should be implemented properly. By becoming sensitive to disability and building according to the law, it also makes the owners of a building obey the country's construction laws. Courts when renting buildings shall take seriously the disability accessibility issue.
- ✓ **Making laws accessible-** In Ethiopia, laws are hardly accessible for PWDs. The extremely limited efforts to ensure the accessibility of laws to persons with disabilities especially to the blind make the justice system in general inaccessible for PWDs. Laws should be available in different forms that can be easily accessible to all. It should be found in brails for those who have visual problems.
- ✓ **Inclusive approach in participating PWDs in all activities of government-** Not only in Ethiopia but elsewhere, persons without disabilities usually make policies and decisions related to PWDs while PWDs themselves are left out of the process. Despite some efforts to allow their participation, the views of PWDs have been overlooked in all implementation activities being taken across various sectors including in the justice system. Participating in the legislation process of laws will make laws to be sensitive to PWDs right to access to justice. They will have a say in governmental activities so that all activities will conform their special needs in every aspect of their life. Besides, governmental activities should be disability issues sensitive, so that feeling of belongingness is developed in actions of government.
- ✓ **Constitutional Amendment-** Jurisprudentially there is different constitutional scrutiny mechanisms. Strict scrutiny which is the most stringent standard of judicial review. It is part of the hierarchy of standards that courts use to weigh the government's interest against a constitutional right or principle. To pass strict scrutiny, the law or policy must satisfy three tests: it must be justified by a compelling governmental interest; the law or policy must be narrowly tailored to achieve that goal or interest; and the law or policy

must be the least restrictive means for achieving that interest. Intermediate scrutiny, is the second level of deciding issues using judicial review. In order to overcome the intermediate scrutiny test, it must be shown that the law or policy being challenged furthers an important government interest in a way that is substantially related to that interest. Rational basis review refers to the default standard of review that courts apply when considering constitutional questions. Courts applying rational basis review seek to determine whether a law is “rationally related” to a “legitimate” government interest, whether real or hypothetical.

With regard to Ethiopian constitution under article 41(5) it recognized PWDs right as a charity not as right perse. It states that government will allocate recourses within available means to help PWDs. Right based approach should be in place in the constitution to claim the right of PWDs. The constitution shall be amended passing through rational basis review in order to achieve the needs of PWDs and the obligation entered by Ethiopia by CRPD. The constitution shall be tailored to meet the right based approach of PWDs.

- ✓ **Legal Amendment**- Laws that discriminates and use non-proper words and terminologies to describe disability shall be amended to comply with the recent disability right issues recognized in the convention. With this regard for example the Ethiopian civil code and other old laws describing disabled persons with improper words and terminologies shall be amended. The Ethiopian civil code which is one of the old laws of the country that is still used and applied; used terminologies which are offensive to describe disability. Especially the governing Amharic version under article 339 and the following used odd words like (ደወይ፣ አእምሮ ጎዶላ፣ ድዳ፣ እወር፣ ደንቆሮ) to describe persons living with mental, hearing and visual disability. Though it is difficult to expect to use words of modern conception of disability at the time of their promulgation; the laws need to be amended to comply with the recent conceptions and terminologies of disabilities. It is one way of showing the respect of the Human rights of PWDs.
- ✓ **Having Disability Code**- A law which includes all disability issues in a codified way is the best solution to incorporate the necessary legal remedies and necessary legal protection for PWDs. This will promote the right based approach in promoting the protection of PWDs right.
- ✓ **Monitoring and Evaluation**- the government shall seriously and properly evaluate the implementation of CRPD as a state party to the convention; so that whether all the government’s action is according to the duty entered by the state. The concerned governmental organ empowered by law to monitor the implementation of CRPD, i.e.

MoLSA, shall exercise all its duties and propose solution for non compliance as per the capacity of the country's economy and other factors allowed.

- ✓ **Training on the right PWDs**- The justice machineries especially the Judges including other court personnel should be trained on the rights of PWDs. The CRPD also imposes duty on the state party to conduct trainings on the rights of PWDs to all concerned ones. With this regard, I couldn't find any Judge who said I took training on the right of PWDs except the course taken at law school, though Ethiopia is a party to the convention. The government with its concerning body is not playing its leading role in training the justice machineries properly so that the rights of PWDs are properly understood and implemented.
- ✓ **Language interpreter at courts**- Language barrier is one of the rampant problems of access to justice for PWDs. Having an interpreter in federal courts is one obligation of the government in implementing access to justice through permanent employment or up on retention. The right is especially vital in criminal cases where decisions/punishments/ are to impede the liberty and sometimes the life of an individual. In order to have fair trial, the charges should be properly understood by the defendant. PWDs especially hearing and speaking problems should have an interpreter even at the expense of the government so that they can properly defend themselves. In most cases adjournments are extended by courts due to lack of interpreter. Courts and other concerning body of the government should see this problem seriously and bring a proper solution once and for all.
- ✓ **Free court fee**- Making PWDs free from court fee in civil cases; taking into consideration their disability; makes the federal courts financially accessible for PWDs. Though there is a law in Ethiopian civil procedure code allowing individuals to bring cases in forma pauper, one has to bringing evidence as to the inability of paying the court fee. Having a legislation that may make PWDs free from court fee at the beginning without proving that they can pay, and reimburse it after the case is completed like pauper but without proof at the beginning is a way of encouraging PWDs to actively exercise their access to justice right. This may be argued that patronizing solution is not advisable, but the fact is that PWDs are not in a better pocket position especially in Ethiopia and they need some affirmative measures until they reach to have the relative capacity with others at least. It should not be considered as discrimination. Costs shall be reduced for PWDs since becoming PWDs by itself is extra costly even in day to day life.
- ✓ **Awareness creation**- PWDs should be aware as to their right to access to justice. In order to exercise what is legally allowed specially, one has to aware of the rights given by law.

There are some laws specifically promulgated for PWDs and without having the awareness as to the existence, they may stay paper tigers. For example, in Ethiopia without knowing the existence of a labor proclamation that exempt PWDs from producing evidence when bringing a case to court on grounds of discrimination, it might go wrong in proving the existence of discrimination. So awareness creation in different easily accessible Medias is vital in playing its role. The awareness should not only be for PWDs but for the whole society so that it is easy for all to implement and respect the rights in the law.

- ✓ **PWDs friendly court rooms**- In all Federal courts there shall be PWDs friendly court rooms so that it can be easily accessible physically and other PWDs issues. In the Federal First instance court there is a positive move towards establishing a specialized court for mentally disabled Persons. This will in turn enhance the participation of these people in the justice system by protecting their right through properly understanding their mental health problem. This kind of court rooms shall be expanded in all tires of Federal Courts with proper training for the judges working there; and of course for other actors of the justice machineries.
- ✓ **Working fully to implement the rights recognized in CRPD**- Finally it is recommended that the government as a signatory to CRPD shall take all the necessary measures to the full realization of the rights enshrined in the convention and other local legislations, so that as access to justice is one of the rights enshrined in the legislations, access to justice of PWDs be implemented properly without discrimination in the Ethiopian Federal Courts.

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