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**THE ROLE OF LEGAL AID IN ENSURING THE RIGHT TO ACCESS TO  
JUSTICE IN CIVIL MATTER: THE LAW AND THE PRACTICE IN  
ETHIOPIAN FEDERAL COURTS.**

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May, 2024

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Thesis

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**Thesis Approval Page**

The thesis titled **"The Role of Legal Aid in Ensuring the Right to Access to Justice in Civil Matter: The Law and the Practice in the Ethiopian Federal Courts.**

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**Declaration**

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can also evoke criminal sanction from the State and civil action from the sources which have not been properly cited or acknowledged.

  
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## Table of Contents

<a href="#">Thesis Approval Page</a> .....	Error! Bookmark not defined.
<a href="#">Declaration</a> .....	Error! Bookmark not defined.
<a href="#">Acknowledgement</a> .....	4
<a href="#">Acronyms</a> .....	8
<a href="#">Abstract</a> .....	9
<a href="#">CHAPTER ONE</a> .....	10
<a href="#">INTRODUCTION</a> .....	10
1.1. <a href="#">Background of the Study</a> .....	10
1.2. <a href="#">Statement of the Problem</a> .....	12
1.3. <a href="#">Study Objective</a> .....	13
1.3.1. <a href="#">General Objective</a> .....	13
1.3.2. <a href="#">Specific Objectives</a> .....	13
1.4. <a href="#">Research Questions</a> .....	14
1.4.1. <a href="#">Central Research Question</a> .....	14
1.4.2. <a href="#">Specific research questions</a> .....	14
1.5. <a href="#">Research Methodology</a> .....	14
1.5.1. <a href="#">Population and Sampling</a> .....	15
1.5.2. <a href="#">Types of data</a> .....	15
1.6. <a href="#">Scope of the Study</a> .....	16
1.7. <a href="#">Significance of the Study</a> .....	16
1.8. <a href="#">Literature Review</a> .....	17
1.9. <a href="#">Limitation of the Study</a> .....	19
1.10. <a href="#">Reference and citation</a> .....	20
1.11. <a href="#">Organization of the Study</a> .....	20
1.12. <a href="#">Ethical Consideration</a> .....	20
2. <a href="#">CHAPTER TWO</a> .....	21
<a href="#">ACCESS TO JUSTICE AND LEGAL AID UNDER INTRNATIONAL LEGAL FRAMEWORK</a> .....	21
2.1. <a href="#">Access to Justice: an Overview</a> .....	21

<a href="#">2.2. Access to Justice in the Major International Human rights Instruments before the Advent of the CRPD</a>	22
<a href="#">2.3. Access to Justice as a Right in the CRPD</a>	25
<a href="#">2.4. The right to Access Justice to Persons with Disabilities in other International Soft Laws</a>	27
<a href="#">2.5. The principle underling the general obligation to provide legal aid in non-criminal matters in general</a>	28
<a href="#">2.5.1. Equality before the Law</a>	29
<a href="#">2.5.2. Fairness and Due Process</a>	29
<a href="#">2.5.3. Protection of Rights and Remedies</a>	29
<a href="#">2.5.4. Social Justice and Inclusion</a>	29
<a href="#">2.5.5. Public Interest and Good Governance</a>	30
<a href="#">2.6. International and Regional Frameworks Regarding Providing Legal Aid in Non-Criminal Matters</a>	30
<a href="#">2.6.1. Universal Declaration of Human Rights</a>	30
<a href="#">2.6.2. International Covenant on Civil and Political Rights</a>	30
<a href="#">2.6.3. United Nations Convention on the Rights of Persons with Disabilities</a>	31
<a href="#">2.7. African Charter on Human and Peoples' Rights</a>	31
<a href="#">2.7.1. Right to a Fair Trial: Article 7</a>	31
<a href="#">2.7.2. Rights of Persons with Disabilities: Article 26</a>	31
<a href="#">2.7.3. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</a>	31
<a href="#">CHAPTER THREE</a>	33
<a href="#">The Right to Access to Justice of PWDs and Legal Aid under the Ethiopian Legal Framework: The Law and the Practice</a>	33
<a href="#">3.1. Constitution of the Federal Democratic Republic of Ethiopia</a>	33
<a href="#">3.2. Proclamation on the Right to Employment of persons with Disabilities</a>	33
<a href="#">3.3. The Federal Courts Establishment Proclamation</a>	34
<a href="#">3.4. Proclamation on the Rights of Persons with Disabilities</a>	<b>Error! Bookmark not defined.</b>
<a href="#">3.5. Overview about legal aid in Ethiopia</a>	35
<a href="#">3.5.1. Models of Legal Aid in Civil Matter in Ethiopia</a>	35
<a href="#">3.6. Impediment of PWDs Right to Access to justice in the Ethiopian Federal Courts: A look in to the Practice</a>	36
<a href="#">3.6.1. Substantive and Procedural Laws as a Barrier</a>	36

3.6.2. <a href="#">Barrier relating to Physical infrastructure of the Federal Courts</a> .....	38
3.6.3. <a href="#">Communication and information related barriers to the enjoyment of the right to access justice by persons with disabilities before the Federal Courts</a> .....	42
3.6.7. <a href="#">The state of legal representation of persons with disabilities before the Federal Courts</a> .....	46
4. <a href="#">CHAPTER FOUR</a> .....	49
<a href="#">CONCLUSION AND RECOMMENDATIONS</a> .....	49
4.2. <a href="#">Conclusion</a> .....	49
4.2. <a href="#">Major Findings</a> .....	51
4.3. <a href="#">Recommendations</a> .....	52
<a href="#">Bibliography</a> .....	54
I. <a href="#">Books and Articles</a> .....	54
II. <a href="#">Legal Instruments</a> .....	55
III. <a href="#">Thesis and dissertation and unpublished material</a> .....	56

## **Acronyms**

ACRWC -	African Charter on the Rights and Welfare of the Child
AU----	African Union
CESCR -	Convention on Economic, Social and Cultural Rights
CRPW-	Convention on the Right of Persons with Disability
CRC-	Convention on the Right of the Child
FDRE -	Federal Democratic Republic of Ethiopia
FFIC -	Federal first instance Court
FHC- -	Federal High Court
FSC -	Federal Supreme Court
ICCPR -	International Covenant on Civil and Political Rights
PWD -	Persons with Disability
UDHR -	Universal Declaration of Human Rights
UNCRC -	United Nations Convention on the Rights of the Child
UNCRPWD -	United Nation Convention on The right of Persons with disability
UN –	United Nation
WHO -	World Health Organization

## **Abstract**

*Human rights are protected by all human beings by birth without any discrimination on any ground, including on the ground of disability. One of such right is the right to access to justice. The CRPD came up with the innovative ascription of ‘access to justice’ as a self-standing right to persons with disabilities for the first time in the history of formative human rights instruments. This recognition of access to justice by itself echoes that persons with disabilities have been immensely victims of injustice. In rectifying this pervasive inequity, the Convention outlines apposite equalizing schemes for persons with disabilities like the provision of procedural accommodations in all legal proceedings and in all capacities that they may take in such proceedings. This entails State parties to furnish the necessary procedural accommodations such as the provision of legal aid to persons with disabilities in a legal proceeding taking in to account the nature and type of impairments and age of these persons without any exception to set aside this international commitment. Using qualitative doctrinal research method, this research examines the role of legal aid in accessing justice by PWDs. The findings of the research revealed inaccessibility of most of the physical infrastructure of Courts, weak provision of the necessary procedural accommodations, limited understanding of the staffs of the courts about the rights of persons with disabilities due to lack of trainings on the subject-matter and weak means of provision of legal aid system. The aggregate effect of these circumstances entails, inter alia, first, clients of the Federal Courts with disabilities are not enjoying the protections guaranteed by the CRPD; second, clients of the Federal Courts with disabilities are not exercising their right to access justice on an equal basis with others, third, the above two states of affairs make the whole process of all legal proceedings including the subsequent final decisions unjust. This research therefore recommends for the revision of laws; enforcement of existing laws; strengthening legal aid system with sufficient fund and adequate human resource.*

### **KeyWords:**

Access to Justice; Persons With Disability; Federal Court; Legal aid

# CHAPTER ONE

## INTRODUCTION

### 1.1. Background of the Study

According to the World Health Organization, 15.6% of the world's population lives with disability.<sup>1</sup> Owing to the different models of disability developed over time, there is no single and accepted definition of the term persons with disability.<sup>2</sup> This research subscribes to the definition of the UN Convention on the Rights of Persons with Disabilities (CRPD), which is currently in use. Accordingly, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments that interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>3</sup> The word 'include' under the convention signifies that the definition is not exhaustive.<sup>4</sup>

From the aforementioned definition, it is vivid that PWDs are disadvantaged people who, due to several impediments, detached from various social, economic and political affairs. These detachments entail them to be vulnerable to numerous problems. If mention is necessary, one of the concerns of PWDs is the right to access to justice.

What makes atypical of the right to access to justice is its significant domain effect on the enforcement of other rights. With this, it is a fundamental right in itself and essential precondition to, an enabler of and a guarantee for the full enjoyment of all other rights and fundamental freedoms.<sup>5</sup> Accordingly, a person with a disability who has encountered disability based discrimination at work may resort a remedy from the justice system. However, if the system fails to accommodate his/her physical, communication or other disability-related needs,

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<sup>1</sup> World Health Organization, World Report on Disability(2011) 27.

<sup>2</sup>Aschalew Ashagrie, 'Access to Justice of PWDs in civil Proceedings before the Federal Courts Ethiopia: The law and the Practice' (2020) 14 MLR1,3

<sup>3</sup> UN Convention on the Rights of Persons with Disabilities, (2006).

<sup>4</sup> Mahider Habtemariam, 'Gender Based Violence, Women with Disabilities and Access to Justice: Ethiopian and Kenya'(LL.M thesis, Central European University,2015),.7.

<sup>5</sup> J Beqiraj, L McNamara and V Wicks, (2017), Access to justice for persons with disabilities: From international principles to practice, International Bar Association, p. 15, retrived from: [https://www.biicl.org/documents/1771\\_access\\_to\\_justice\\_persons\\_with\\_disabilities\\_report\\_october\\_2017.pdf](https://www.biicl.org/documents/1771_access_to_justice_persons_with_disabilities_report_october_2017.pdf).

and/or directly discriminates against him/her then such situation amounts as an explicit denial of access to the justice system and thereby infringes his/her right to work as well. In general, barriers that impede the equal enjoyment of the right to access to justice of persons with disabilities need be removed so that they can enjoy the equal opportunity to perform their duties as parties, witnesses, lawyers, prosecutors, judges, arbitrators, and other participants in the administration of justice. Thus, the effective protection and enforcement of the right to access justice to people with disabilities has a paramount significance to the realization of their overall rights.

Be that as it may, it is one of the basic rights that serve as an instrument for the protection of other fundamental rights apart from being a right in itself.<sup>6</sup> Needless to state, access to justice is a very broad right that featured both the means and end dimension. It is used as a means in a sense that it serves as an instrument for the protection and promotion of PWDs human rights. It is also an end as it eventually accorded PWDs an overall access to the justice system.<sup>7</sup> As this stage, it should be noted that, the exact scope of the right to access to justice is not clearly established.<sup>8</sup>

The modern understanding of the term access to justice lends itself to three dimensions. It refers to physical or geographical accessibility, access to laws and legal information and access to legal aid services. Due to their vulnerability, access to justice is very important to the persons with disabilities.<sup>9</sup>

Coming to the situation in Ethiopia, persons with disabilities constitute 17% of the population.<sup>10</sup> As Ethiopia is not an exception to the aforementioned discussions, access to justice of persons with disabilities is at stake. Ethiopia has ratified numerous international human rights instruments, including the convention on the rights of the disabilities that has implication on the

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<sup>6</sup>Anbessie Gura, 'The Role of University-Based Legal Aid Centers in Ensuring Access to Justice in Ethiopia' (2018)BLR 357, 2.

<sup>7</sup> Bezawit Bekele and Yonas Mulugeta, 'Women with disabilities and their challenges in Laws and administration of Justice: cases from Addis Ababa' (2018) 3EJHR 138, 139.

<sup>8</sup>Jemaneh, K. W., 'Reconsidering Access to Justice in Ethiopia: Towards a Human Rights Approach' In P. S. Toggia, T. F. Geraghty, & K. W. Jemaneh (eds), Access to Justice in Ethiopia: Towards an Inventory of Issues (Addis Ababa: Center for Human Right, Addis Ababa University 2014),1.

<sup>9</sup> Ibid.

<sup>10</sup>Bezawit and Yonas(n 7) 139.

right to access to justice. Access to justice is also one of the fundamental human rights that has recognized under the 1995 Constitution. Besides, it has also different policies and laws relating to disabilities. A case in point is the proclamation on disabilities employment right. Despite the above efforts, a meaningful work has not been done; the other bottleneck is the absence of definition regarding persons with disabilities is. Thus, the mere fact that there exists a law that protects the interest of the persons with disabilities does not ensure their protection. It needs to have institutional mechanism set for the implementation of their right. Also, the adequacy of the laws itself is questionable. Therefore, making justice accessible to the disables is at infant stage in Ethiopia. Hence, it has to be studied. The effectiveness of the laws, their adequacy, the presence of the institutions, and their suitability to the interests of the disables has to be explored.

The purpose of this research is, therefore, to assess as to the role of legal aid in ensuring the right to access to justice of persons with disabilities in civil proceedings and the practice in this regard in Ethiopian federal courts. In so doing, the subsequent parts of this proposal discussed the specific problem igniting the research together with the objective it needs to attain and the questions it will seeks to answer.

## **1.2. Statement of the Problem**

As a result of multifarious barriers, 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 respective country.<sup>11</sup> Accordingly, based on the estimation of the 2019 research of the World Justice Project (WJP), 1.5 billion people cannot obtain justice for civil, administrative, or criminal justice problems; 4.5 billion people are excluded from the opportunities the law provides, such as employment and housing; and 253 million people live in extreme conditions of injustice.<sup>12</sup> These facts resonate that 5.1 billion people, two thirds of the world's population, are experiencing at least one of these justice issues.

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<sup>11</sup>Stephanie Ortoleva, (2011) Inaccessible Justice Human Rights Persons with Disabilities and the Legal System, 282 *ILSA Journal of International & Comparative Law* [Vol. 17:2, p. 5.

<sup>12</sup> The World Justice Project, World Justice Forum Report 2019, April 29-May 2 2019 The Hague, Netherlands, p.16, retrived from: [https://worldjusticeproject.org/sites/default/files/documents/WJP-Forum-Report-2019-Online\\_1.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-Forum-Report-2019-Online_1.pdf)

The inability of access to justice is a leading factor that can be both a cause and a result of poverty.<sup>13</sup>

As explained above, access to justice of persons with disabilities in Ethiopia is one concern that needs a research. In Ethiopia, persons with disability consist 17% of the population. As such, their rights remain to be an issue to worry about. Besides, access to justice is not a right in itself but instrument for the protection of other rights. In view of these, the majority of the Ethiopian population is said to be illiterate. Thus, legal awareness seems a predominant concern. Inaccessibility of legal service is the bottleneck in Ethiopia. Comparing to the demands, the number of practicing lawyer is few. The mechanisms of legal aids are not as such well-organized. The legal aid currently provided to the vulnerable in the country is only limited to the criminal matters. But, it is known that the justice of the country comprises of both the civil and criminal justice system. The legal aid in non-criminal matters is not much explored in researches. The legal aid in non-criminal matters has implication on the awareness of the service users, cost of litigation and court fees to which persons with disabilities will be discouraged from bringing cases to the courts of law. As a matter of fact, the kind of services, the profile of the providers, and the manner of legal aid service delivery is not studied. The issue of access to justice in the context of the disables are not known or known little. Thus, a qualitative research bringing all the issue and shading a light on the concepts is immensely needed. Sometimes, the action we need to take on a given matter depends on how much we know the thing.

This research is, therefore, examined whether justice is accessible to the disabled in Ethiopia with specific reference being made to provisions of legal aid in non-criminal matters.

### **1.3. Study Objective**

#### **1.3.1. General Objective**

The main objective of the study is to examine the role of legal aid in ensuring the right to access to justice of persons with disabilities in civil proceedings before the Ethiopian Federal Courts.

#### **1.3.2. Specific Objectives**

**The study is designed to achieve the following specific objectives:**

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<sup>13</sup> OECD, (2016), Leveraging the SDGs for Inclusive Growth: delivering Justice for All, p. 6.

1. To identify the challenges PWDs face in accessing justice.
2. To examine whether or not there is adequate provision of legal aid service on non-criminal matters to PWDs.
3. To examine the sufficiency and adequacy of substantive and procedural laws as well as institutional frameworks in ensuring provision of legal aid on non-criminal matters of persons with disabilities

## **1.4. Research Questions**

### **1.4.1. Central Research Question**

In order to attain the above research objectives the research answered the following central research question.

To what extent does legal aid help in ensuring the right to access to justice of persons with disabilities in civil proceedings in Ethiopian federal courts and what does the practice looks like?

### **1.4.2. Specific research questions**

For the close investigation of the matter, the central research question is further divided into specific questions in a way it contributes to answer the central research question. Hence, this research paper attempts to answer the following sub research questions.

1. What are the issues of access to justice regarding to persons with disabilities?
2. Are the current laws and policies in Ethiopia adequate to ensure the right to access to justice of PWDs?
3. Is legal Aid adequately provided to PWDs in civil proceedings with a view to enhancing the right to access to justice of these persons?
4. Is there any administrative and institutional readiness to address the concerns on the provision of legal aid on non-criminal matters to persons with disabilities?

## **1.5. Research Methodology**

The main purpose of the research is to explore whether or not legal aid in non-criminal matters is accessible to the disables in Ethiopia and its practice in Ethiopian federal courts. For this reason, the research is made to be chiefly empirical. A research is empirical if it is based on observation

of the world. The data gathered from different means are a term for facts about the world.<sup>14</sup> Thus, the fact that the research assesses the protection, implementation and associated challenges of the provision of legal aid service in non-criminal matters of persons with disabilities in Ethiopian federal courts through different data collection method which I will discuss later on makes this research empirical. However, Doctrinal research aspect is also embedded regarding the study of the theoretical frameworks and of the law.

The other question worth rising at this juncture is that what is the best way to study the issue of the role of legal aid in ensuring access to justice to persons with disabilities in non-criminal matters. The nature of the problem, the way the research question best answered, and the fact that the nature of the research question and the way the issue framed needs deep understanding of the issue and interaction between the researcher and the research participants makes this research to employ a qualitative research approach.

#### **1.5.1. Population and Sampling**

As will be depicted latter, the researcher employed different data collection tool for the empirical enquiry with the concerned organs. As such, Courts, prosecution office (Ministry of justice), disability associations, the Ministry of labour and social affairs are the general population selected for this study. Pertaining to sampling, the following remarks are worth noting. Since, this research opts for qualitative research approach; it used non-random/non-probability sampling. In this research, the sample size was determined based data saturation or redundancy. Data saturation is a feature of qualitative research approach that this research will employ.

#### **1.5.2. Types of data**

The research employed both primary and secondary data. The primary data are laws (both primary and secondary) and empirical data collected through interview. As far as secondary data is concerned, books, journals, and other related documents are employed.

##### **1.5.2.1. Data Collection Method**

From qualitative data collection tools, this research employed interview to collect the empirical data. As elucidated above, the nature of the research required to have interaction with the participants for the reasons that the role of legal aid in ensuring access to justice to persons with

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<sup>14</sup>Ian Dobinson and Francis Johns, 'Qualitative Legal Research' in Mike McConville and Wing Hong Chui(eds), Edinburgh University Press(2007)18

disabilities on non-criminal matters not much known. Due to this, this research employed interview as a data collection tool.

In this connection, it is worthwhile to mention here that the interview was directed to academicians, judges, prosecutors, PWDs who came into contact with the justice system and experts from Ministry Labor and social affairs, eventually, as part of the methodology, drawing of a comparative experience would be inevitable.

### **1.6. Scope of the Study**

The role of legal aid in ensuring access to justice to peoples with disabilities on non-criminal matters is the main theme of the study. As mentioned above, the issue of access to justice incorporates three components; geographical and physical accessibility, access to laws, and provision of legal aid. With this in mind, this research inevitably touched the entire three dimensions but having regard to time and resources; a robust examination was only made on provision of legal aid in non-criminal matters.. It also intends to examine the experience of PWDs in the formal justice system. Thus, the informal justice system is not the subject of this study. Pertaining to types of disabilities, it should be noted that this study mainly focused on three types of disabilities; visual, hearing and physical impairments. In the interest of time and other resource consideration, the empirical data are confined to the Ethiopian federal courts which are only situated in Addis Ababa.

### **1.7. Significance of the Study**

As stated above, access to justice constitutes to be one of the fundamental human rights that serve as an instrument for the protection of other human rights. It is also said that, PWDs fall under the category of vulnerable groups. Thus, doing a research on the right to access to justice of PWDs believed to have both theoretical and practical merit. As mentioned earlier, the issue of access to justice in the context of the disables is one of the areas that less attracts the attention of legal researchers so far despite a few attempts. Thus, this research will contribute to the existing stock of knowledge on the issue of access to justice from the perspective of the disables.

As far as its practical significance is concerned, it will serve as an input to the legislator to reconsider the existing laws in line with the needs PWDs. One of the specific objectives of the study is to identify the challenges PWDs faces in accessing justice and the scope of the right.

Thus, it will create awareness to PWDs about the exact nature of their right. Besides, as there are a lot that remains to be done, this research will serve as a stepping-board for further studies to be.

### **1.8. Literature Review**

The right to access to justice in general and in the context of the disables in particular has attracted the attention of the academicians, legislators and the international community at large. Their products are mainly reflected in terms of books, articles, researches in different levels, laws and different initiatives. Thus, in what follows, I will attempt to show the literatures in the Ethiopian case only.

At the outset, one thing should be clear that there is fairly large amount of literature on the right to access to justice in Ethiopia from different perspectives and there exist a good amount of literatures about different rights of PWDs such as the right to employment. Yet, this literature review is confined to deal the right to access to justice of persons with disabilities in the Ethiopian setup.

To the best knowledge of the researcher, Mahider Mulugeta conducts the first research, which is conducted as a partial fulfillment of her LL.M studies, titled as “Gender Based Violence, Women with Disabilities and Access to Justice: Ethiopia and Kenya.”<sup>15</sup> Despite the fact that it is a good read, the research appeared to be shallow. The researcher allotted much discussion to the issue of gender-based violence. Besides, it is a typical doctrinal research and as such, the practice is not examined.

Bezawit Bekelle, Yonas Mulugeta and Hanna Girma conducted the second research, which is published in the form of an article, titled as “women with disabilities, their challenges in Laws and administration: Cases from Addis Ababa.”<sup>16</sup> This is one of the researches that is a vital read when it comes to the issue of access to justice of persons with disabilities. The researchers took empirical assessment. The researchers, however, failed to examine the three aspects of access to justice. Especially, access to laws and provisions of legal aid in non-criminal matters are totally

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<sup>15</sup> Mahider Habtemariam, ‘Gender Based Violence, Women with Disabilities and Access to Justice: Ethiopian and Kenya’(LL.M thesis, Central European University,2015),.7.

<sup>16</sup> Bezawit Bekele and Yonas Mulugeta, ‘Women with disabilities and their challenges in Laws and administration of Justice: cases from Addis Ababa’ (2018) 3EJHR 138, 139.

ignored. Moreover, the adequacy of the substantive and procedural laws to address the issue of persons with disabilities is not examined.

The other research came in 2017. In this regard, Mizanie Abate, Alebachew Birhanu, and Mihret Alemayehu wrote an article titled as “Advancing Access to Justice for the Poor and Vulnerable through Legal Clinics in Ethiopia: Constraints and Opportunities.”<sup>17</sup> The authors did a great job but the article only aimed at elucidating the role of university based legal clinics in enhancing access to justice. As the risk of stating the obvious, this research is not intended to deal with the issue of access to justice of persons with disabilities as such. Thus, the fact that whether justice is accessible by the persons with disabilities is not examined. A few discussions has been made about persons with disabilities but, the physical accessibility of justice institutions, accessibility of laws and provisions of legal aid are not discussed. Overall, the article simply asserts that legal clinics have a role in ensuring access to justice. Actually, a research is forward looking one in a sense that legal clinics are inexistent in the present reality of Ethiopian law schools.

The other work, in fact a comprehensive one, is the fruits of Kokebe Wolde, Pietro Toggia and Thomas Geraghty editions. This work appeared in a book form. The book titled as “Access to Justice in Ethiopia: Towards an Inventory of Issues.”<sup>18</sup> This book is divided in to five chapters with different themes that further featured a contribution of different authors. Part five is of interest to me as it is dedicated to deal with access to justice and the vulnerable. From this part the contribution of Murado Abdo attracts my attention. His work entitled as “Disability and Access to Criminal Justice System in Ethiopia.”<sup>19</sup> In precise, he attempted to make a discussion of what he considered issues in criminal justice system. To start with, this work is only limited to deal with the criminal justice system while I intend to study the civil justice system. Even in the criminal justice system, no adequate discussion, however, is made. Although it is empirical research, the data seemed outdated as it was done back in 2014. Obviously, there are

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<sup>17</sup> Mizanie Abate, Alebachew Birhanu, and Mihret Alemayehu, ‘Advancing Access to Justice for the Poor and Vulnerable through Legal Clinics in Ethiopia: Constraints and Opportunities’(2017) 11 MLR1,4.

<sup>18</sup> Jemaneh, K. W., ‘Reconsidering Access to Justice in Ethiopia: Towards a Human Rights Approach’ In P. S. Toggia, T. F. Geraghty, & K. W. Jemaneh (eds), Access to Justice in Ethiopia: Towards an Inventory of Issues (Addis Ababa: Center for Human Right, Addis Ababa University 2014),1.

<sup>19</sup> Murado Abdo, ‘Disability and Access to Criminal Justice System in Ethiopia’ In P.S. Toggia, T.F. Geraghty, & K. w. Jemaneh(eds), Access to Justice in Ethiopia: Towards an Inventory of Issues(Addis Ababa: Center for Human Rights, Addis Ababa University 2014)

improvements since then, which this research aimed to deal with. Besides, Murado only confined himself to deal with the physical accessibility of the justice system and the compatibility of the criminal procedure code to the interests of persons with disabilities.

The final and the very recent work that deserve mention here is the work of Aschalew Ashagrie titled as “Access to Justice for PWDs in civil Proceedings before the Federal Courts of Ethiopia: The Law and the Practice.”<sup>20</sup> Aschalew wrote an impressive article. Despite its impressiveness, the article has allotted 9 pages to discuss the empirical aspect. In his article He deals with the adequacy of the substantive and procedural laws in Ethiopia in protecting the interest of persons with disabilities. However, his discussion seems confined to the physical accessibility in most instances. The accessibility of laws and the provision of legal aid in non-criminal matters, which this research is interested to embark upon, are not totally discussed.

Despite their shortcomings, the above researches will be a vital read and considered a modest contribution. The other common pitfall of the above literatures is that they were done before the coming into effect of the recent reforms- legal and institutional being undertaken in the country. It is therefore tenable to assume that there is a large gap loomed in this regard. As stated repeatedly, the provision of legal aid in non-criminal matters are not yet studied in the Ethiopian set up.

This research therefore takes advantage of these gaps, and intends to fill the gaps in these literatures.

### **1.9. Limitation of the Study**

Conducting a research is not all the way an easy task because of the existence of many hindrances while conducting it. This research being not exception to this has manifold limitations which in effect may have a chance to reduce the effectiveness of the study. Consequently, the study is limited by; first, time. So, time scarcity crucially interferes in the study in terms of collecting the necessary data, analyzing data and reviewing the work done. Second, the study is limited by literatures. The issue of the right to access to justice in the context of PWDs is not sufficiently dealt with in Ethiopia. The dearth of literatures has been a limitation. Finally, if

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<sup>20</sup>Aschalew Ashagrie, ‘Access to Justice of PWDs in civil Proceedings before the Federal Courts Ethiopia: The law and the Practice’ (2020) 14 MLR1,3.

mention is necessary, the study is limited by unnecessary bureaucratic managerial systems and unwillingness in accessing participants of this research and necessary data. Therefore, the readers should take into consideration of the above limitations.

#### **1.10. Reference and citation**

As per the LLM Thesis Guideline of the school, the footnote approach and OSCOLA referencing style will be used in the thesis. For domestic laws and court cases, I will follow the rules of citation of the Journal of Ethiopian Law.

#### **1.11. Organization of the Study**

The research comprises of four chapters which in turn divided into sections and sub-sections. The first chapter is an introductory chapter consisting of background of the study, statement of the problem and research questions, objective, scope, significance, limitations, methodology, and ethical consideration of the study. The second chapter deals with access to justice and disability in general from conceptual and theoretical perspectives. The third chapter concerned with the law and practical assessment of the role of legal aid in ensuring the right to access to justice of persons with disabilities in non-criminal proceedings. Lastly, chapter four concludes the major points of the research, forwards the findings and provides recommendations.

#### **1.12. Ethical Consideration**

Throughout the research process, the researcher respected and apply all ethical standards related to conducting a research.

In particular, before collecting data from the respondent's/participant's the researcher employed and secured informed consent by notifying the purposes of the study. The researcher also kept the confidentiality of information collected from participants/organization.

## 2. CHAPTER TWO

### ACCESS TO JUSTICE AND LEGAL AID UNDER INTERNATIONAL LEGAL FRAMEWORK

#### Introduction

International human rights instruments provide important standards and guidance on access to justice and legal aid. These instruments recognize access to justice as a fundamental human right and emphasize the importance of ensuring equal access to legal assistance for all individuals. With the view that international legal instruments set standards for domestic legal frameworks and as such serve as a benchmark for the empirical discussion intended in the next chapter, in what follows, a brief discussion of the international legal framework pertaining to the subject will be made.

#### 2.1. Access to Justice: an Overview

Access to justice is not only a right in itself; it is also an instrumental right which allows individuals to enforce their rights. The Right to Access to Justice is not known with such terminology until very recently.<sup>21</sup> Instead, several terms were employed in different human rights instruments.<sup>22</sup> It is only in the 1970s and 1980s, thanks to the works of Mauro Capelletti, the term access to justice began to be used.<sup>23</sup> Instruments produced this time onward vividly employed the terms. A case in point is the 2006 UN Convention on the Rights of Persons with Disabilities.

It is understood that the right to Access to justice incorporated mainly three dimensions. The first dimension is Geographical access which refers to the distribution and location of justice institutions.<sup>24</sup> Physical access refers to the ability of consumers to visit the facilities of justice institutions as well as ensuring that participants can adequately follow the proceedings. Financial access is concerned with the ability to pay court fees and the availability of legal aid

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<sup>21</sup> Mizanie, P.5

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Legal Services Institute. 2012. "Improving Access to Justice: Scope of the Regulatory Framework". <https://stephenmayson.files.wordpress.com/2013/08/mayson-marleydunn-2012-access-to-justice.pdf>. (Accessed on April 13, 2024).

for free or at reduced costs. Technological access, on the other hand, is about access to information outlets such as the Internet.

## **2.2. Access to Justice in the Major International Human rights Instruments before the Advent of the CRPD**

As the study will go through in the up-coming section, the CRPD is the first international human rights instruments that explicitly stipulates the right to access justice in such a way. However, the basic components of the right have been embraced by distinct international and regional human rights frameworks since the 1948 UDHR. Pertaining to this, the UDHR is the first formative human rights document that protects a range of rights falling within the ambit of access to justice. With this, a number of provisions enumerate such rights including the right to recognition as a person,<sup>25</sup> equal protection before the law and protection from any discrimination,<sup>26</sup> be awarded effective remedy in accordance with appropriate national laws for any violation of rights.<sup>27</sup> Moreover, it also encompasses procedural safeguards like the right not be subjected to arbitrary arrest, detention or exile,<sup>28</sup> guarantees to everyone in full equality to a fair and public hearing by an independent and impartial tribunal in the adjudication of his/her rights and obligations.<sup>29</sup>

In the same fashion, the International Covenant on Civil and Political Rights (ICCPR) protects wide-ranging rights vital to the enjoyment of the right to access to justice. On this account, it guarantees the equal recognition of everyone as a person before the law everywhere.<sup>30</sup> It also warrants the equality of all persons before the courts and tribunals and entitles everyone to a fair and public hearing by a legally established competent, independent and impartial tribunal.<sup>31</sup> The Covenant sets forth minimum guarantees to all criminal suspects in full equality and these, inter alia, include, the right to be informed promptly and in detail in a language the nature and cause of

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<sup>25</sup> UDHR Article 6.

<sup>26</sup> Id Article 7.

<sup>27</sup> Id Article 8.

<sup>28</sup> Id Article 9.

<sup>29</sup> Id Article 10.

<sup>30</sup> ICCPR Article 16.

<sup>31</sup> Id Article 14 (1).

the charge,<sup>32</sup> be tried without undue delay,<sup>33</sup> to have a legal assistance,<sup>34</sup> to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”<sup>35</sup>

The Human Rights Committee has made relevant interpretations regarding the concept and scope of the procedural accommodations protected in Article 14 of the Covenant. Accordingly, the Committee in its interpretation of Article 14 (1) of the covenant upholds the requisite of ensuring equal access and equality of arms between the parties to the proceedings in question and their treatment without any discrimination.<sup>36</sup> Further, it accentuates that access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice.<sup>37</sup> The Committee has also emphasized that the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.<sup>38</sup> Thus, although the above-mentioned provision requires States to ensure free legal aid for defendants only in criminal trials, the Human Rights Committee urges States to provide legal assistance to those who need it in civil litigations too.<sup>39</sup>

The African Charter on Human and Peoples Rights has similarly embraced substantive protections relevant to the enjoyment of the right to access justice before a court of law. Such protections include the right to equality before the law and equal protection of the law.<sup>40</sup> It also contains procedural protections that, inter alia, comprise the right to be presumed innocent until

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<sup>32</sup> Id Article 14(3)/A).

<sup>33</sup> Id Article 14(3)/C).

<sup>34</sup> id Article 14(3)/C). this inference of the Covenant has a particular significance to safeguard the availability of sign language interpreter to deaf suspect/accused defendants to communicate before a court of law with the court itself and others to enjoy their due process rights.

<sup>35</sup> Id Article 14(3)/F).

<sup>36</sup> Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial (2007), CCPR/C/GC/32 at paras 8–9.

<sup>37</sup> Ibid.

<sup>38</sup> Id, Para. 10. Hence, it advocates the need to ensure the availability of the free legal aid beyond the criminal context and has suggested that the provision of such services in civil proceedings too.

<sup>39</sup> Ibid.

<sup>40</sup> ACHPR Article 2.

proven guilty,<sup>41</sup> to defend any charge that may be brought against her/him,<sup>42</sup> be tried within reasonable time by an impartial and competent tribunal.<sup>43</sup>

Apart from the above general normative frameworks, several specific group rights based norms incorporate various components of the right to access to justice. The UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare (ACRWC) are amid of such human rights frameworks. It is pertinent to ensure that children have the right to access to a fair, transparent and child- sensitive justice systems through which they can enforce and protect their rights.<sup>44</sup> Upon this account, both frameworks emphasize that the child has the right to be heard directly or through representatives in any judicial proceeding relating to issues that affect her/his interests.<sup>45</sup> This right of the child need be enforced in a range of proceedings particularly, in proceedings like separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care and social security.<sup>46</sup>

In sum, all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities.<sup>47</sup> Furthermore, all the above human rights norms take account of the non-discriminatory nature of the entitlements contained in their respective texts.<sup>48</sup> Hence, persons with disabilities are entitled to enjoy all the protections guaranteed in all human rights norms, including protections relating to access to justice outlined in the above and other international and regional human rights norms. Likewise, as a State party to all the above and many other human rights frameworks, Ethiopia is bound to enforce the distinct components of access to justice expounded in the afore-mentioned instruments to persons with disabilities on an equal basis with others.

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<sup>41</sup> Id Article 7 (1) (B),

<sup>42</sup> Id Article 7 (1) (C).

<sup>43</sup> Id Article 7 (1) (D).

<sup>44</sup> Office of the High Commissioner for Human Rights, UN Common Approach to Justice for Children (Geneva and New York, 2008), p. 1.

<sup>45</sup> Convention on the Rights of the Child (CRC) of 1989, Article 12 (2) and African Charter on the Rights and Welfare of the Child (ACRWC) Article 4 (2).

<sup>46</sup> Committee on the Rights of the Child, General Comment No. 12 (2009) The right of the child to be heard, CRC/C/GC/12, para. 32.

<sup>47</sup> Vienna Declaration and Programme of Action, Adopted by World Conference on Human Rights, A/CONF.157/23, 12 JULY 1993, 14-25 JUNE 1993, para. 63.

<sup>48</sup> UDHR Article 2, ICCPR and CRC Article 2 (1), ACHPR Article 2, and ACRWC Article 3.

### **2.3. Access to Justice as a Right in the CRPD**

Adopted in 2006, the CRPD is the most comprehensive international treaty on disability rights. It recognizes PWDs as rights holders and outlines specific obligations for states parties to promote, protect, and ensure the full enjoyment of all human rights by PWDs. The CRPD covers a wide range of rights, including civil, political, economic, social, and cultural rights, and includes provisions on accessibility, non-discrimination, and participation.

As it is noted in the above section, the distinct aspects of the right to access justice are provided by a range of international and regional human rights instruments. It is worth noting, however, that the general protections provided in the above norms have barely taken in to account essential procedural and age appropriate accommodations to ensure the enjoyment of these protections by persons with disabilities on an equal basis with other section of the society. Seemingly, to address this short fall of earlier human rights norms, the CRPD came up with an explicit stipulation of the right to access to justice to reinvigorate the equal enjoyment of this right by persons with disabilities.<sup>49</sup> the Convention emphasizes that the notion of access to justice for persons with disabilities entails not only the removal of barriers to ensure access to legal proceedings to seek and obtain appropriate remedies on an equal basis with others, but also the promotion of the active involvement and participation of persons with disabilities in the administration of justice.<sup>50</sup>

The CRPD entitles the right to access to justice to persons other than parties concerned in legal proceedings like witnesses, judges and lawyers for the first time in human rights treaties.<sup>51</sup> In exercising their right to access to justice in an effective way, persons with disabilities are entitled the provision of procedural and age- appropriate accommodations.<sup>52</sup> As the textual reading of Article 13 (1) of the Convention avers, the purpose of the provision of procedural and age appropriate accommodations is to facilitate the direct and indirect participation of persons with disabilities in all legal proceedings on an equal basis with others. Thus, procedural accommodations serve as a means to effectively realize the right to a fair trial and the right to participate in the administration of justice, and are an intrinsic component of the right to access

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<sup>49</sup> CRPD Article 13.

<sup>50</sup> See the cumulative readings of Article 13 (1) and (2) of the CRPD.

<sup>51</sup> CRPD Article 13 (1)and (2).

<sup>52</sup> Ibid.

to justice. Such accommodations are not concerned with the outcome of proceedings; they are needed and put in place to remove barriers and guarantee equality.<sup>53</sup> Hence, procedural accommodations do not represent an ‘extra privilege’ to parties in proceedings.

Equality of arms is a component of the right to a fair trial, guaranteeing that the same procedural rights are provided to all the parties to ensure access to the same information and the same opportunities to adduce and challenge evidence.<sup>54</sup> Persons with disabilities are frequently hindered in enjoying equality of arms due to inaccessible documentation or procedures.<sup>55</sup> Despite Article 13 of the CRPD fails to specify what constitutes procedural accommodations, the interpretations made by the Committee on the Rights of Persons with Disabilities explicate that circumstances like the provision of sign language interpretation, legal and judicial information in accessible formats for, multiple means of communication, easy read versions of documents, Braille and video link testimony, are among others.<sup>56</sup> Procedural accommodations should also encompass procedural flexibility to accommodate specific requirements for participation, for example extending or adjusting procedural deadlines and adjusting procedural formalities.<sup>57</sup>

The entitlement of enjoying procedural accommodations by all persons including persons with disabilities stems from the civil and political rights that are directly linked to the principle of non-discrimination.<sup>58</sup> Consequently, the obligation to provide procedural accommodations requires an immediate realization and any failure to provide the procedural accommodations to persons with disabilities is tantamount as discrimination on the basis of disability.<sup>59</sup> Upon this conviction, Article 13 (1) of the CRPD has preferred deliberately to adopt the language

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<sup>53</sup> Flynn Eilionóir, Moloney Catriona, Fiala-B. Janos and Echevarria V. Irene, (December 2019), Access to Justice of Persons with Disabilities, p. 25.

<sup>54</sup> Human Rights Committee, general comment No. 32, at note 36, para. 13.

<sup>55</sup> Human Rights Council, ‘Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (Report of the Office of the High Commissioner for Human Rights, 2017), para 24.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Id.*, para. 25.

<sup>59</sup> Flynn Eilionóir, Moloney Catriona, Fiala-B. Janos and Echevarria V. Irene, at note 53, p. 25.

‘procedural’ to ‘reasonable’ accommodations to absolve such accommodations from the proportionate test.<sup>60</sup>

The right to access justice of persons with disabilities protected in Article 13 of the Convention can however be hardly realized unless the effective realization of other rights guaranteed in the Convention. With regard to this, rights to equality and non-discrimination, accessibility, recognition as persons, access to information enshrined in Article 5, 9, 12, and 21 respectively have a particular importance to exercise the right to access justice by persons with disabilities on an equal basis with others. Hence, it is pertinent to read Article 13 in tandem with these rights.

#### **2.4. The right to Access Justice to Persons with Disabilities in other International Soft Laws**

Besides to the above-highlighted core international and regional human rights instruments, the international community has managed to adopt relevant soft laws that may shape the design and implementation of the right to access justice of persons with disabilities. One of such important law is the 2030 Agenda for the Sustainable Development Goals (SDGs), which explicitly ensures the right to equal access to justice for all.<sup>61</sup> The SDGs have been endorsed by 193 States including Ethiopia showing their commitment to uphold the goals enunciated in the document. Hence, States are required to act in making the accessibility of justice to all persons with disabilities on an equal basis with others to realize the spirit of goal 16.3.

The other indispensable international soft law is the International Principles and Guidelines on Access to Justice for Persons with Disabilities which was adopted in 2020. This normative framework is anchored fundamentally on 10 principles.<sup>62</sup> The principles enshrined in this document can serve as an instrumental reference of the CRPD particularly in clarifying the essence and scope of the right to access justice protected by the Convention. With respect to this, the document, in addition to outlining the definition of ‘procedural accommodations’, emphasizes on the need of protecting essential aspects of procedural and age-appropriate accommodations to persons with disabilities. Accordingly, it guarantees rights like the

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<sup>60</sup> Human Rights Council, at note 55, para 25. **This was one of the debatable issue In the negotiations on article 13 of the Convention, but at last, the proviso is crafted by using ‘procedural’ in lieu of ‘reasonable’ accommodations.**

<sup>61</sup> UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, goal 16.3, <https://www.refworld.org/docid/57b6e3e44.html>.

<sup>62</sup> International Principles and Guidelines on Access to Justice for Persons with Disabilities, at note 13.

recognition of legal capacity,<sup>63</sup> universal accessibility of facilities and services,<sup>64</sup> right to have procedural accommodations for all persons with disabilities including children,<sup>65</sup> right to access legal notices and information in a timely and accessible manner on an equal basis with others.<sup>66</sup> Since the CRPD has not addressed to what amounts to procedural and age-appropriate accommodations and the specific components of such accommodations, States may refer to these Principles and Guidelines to effectively apply the right to access to justice protected by the CRPD. Consequently, although the document is not binding, its enlightening role in this regard is immensely pivotal.

Moreover, it recognizes some rights which are not protected by the CRPD. On this account, it underscores, for instance, the right to access to free or affordable legal assistance, to realize the right to fair trial of children with disabilities in all matters and to all other persons with disabilities in all legal procedures and proceedings that relate to violations of human rights or fundamental freedoms or those that could negatively affect such rights or freedoms.<sup>67</sup> The same protection is outlined in case of criminal proceedings in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.<sup>68</sup> Therefore, these norms may play a gap filling role to the CRPD. In sum, these are some of the soft laws which has close correlation with the right to access to justice of persons with disabilities. In spite of their non-binding effect on States, they may be used as insightful guidance in drafting laws relating to the right to access justice of persons with disabilities and in due course of the application of the right.

## **2.5. The principle underlying the general obligation to provide legal aid in non-criminal matters in general**

The principle underlying the general obligation to provide legal aid in non-criminal matters is rooted in the fundamental principles of justice, equality, and the rule of law. Access to justice is recognized as a cornerstone of democratic societies, ensuring that all individuals have the

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<sup>63</sup> Id, principle 1.

<sup>64</sup> Id, Principle 2.

<sup>65</sup> Id, Principle 3.

<sup>66</sup> Id, Principle 4.

<sup>67</sup> Id, principle 6.

<sup>68</sup> United Nations Office on Drugs and Crime, (June 2013), United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Vienna, Principle 10 Para. 32.

opportunity to assert their rights, seek redress for grievances, and participate meaningfully in legal processes. Here's a detailed review of the principle underlying this obligation:

### **2.5.1. Equality before the Law**

Central to the principle of providing legal aid in non-criminal matters is the concept of equality before the law. Regardless of an individual's financial means or social status, everyone should have equal access to justice and the legal system. Legal aid helps level the playing field by providing assistance to those who cannot afford legal representation, ensuring that they are not disadvantaged in legal proceedings.

### **2.5.2. Fairness and Due Process**

Legal aid is essential for safeguarding the principles of fairness and due process in civil, administrative, and other non-criminal proceedings. Without access to legal representation, individuals may be unable to effectively present their case, understand their rights, or navigate complex legal procedures. Legal aid helps ensure that all parties have a fair opportunity to be heard and that legal proceedings are conducted impartially and transparently.

### **2.5.3. Protection of Rights and Remedies**

Legal aid plays a crucial role in protecting individuals' rights and securing access to legal remedies. In many cases, individuals facing legal challenges may be at risk of losing their rights, livelihoods, or personal freedoms without adequate legal assistance. Legal aid helps individuals assert their rights, challenge unlawful actions, and seek redress for violations, thereby promoting accountability and upholding the rule of law.

### **2.5.4. Social Justice and Inclusion**

Providing legal aid in non-criminal matters is also grounded in principles of social justice and inclusion. Access to justice is not merely a matter of legal technicalities but is essential for addressing systemic inequalities, advancing social welfare, and promoting the well-being of all members of society. Legal aid helps empower marginalized and vulnerable individuals, including low-income persons, minorities, persons with disabilities, and other disadvantaged groups, to assert their rights and advocate for their interests.

### **2.5.5. Public Interest and Good Governance**

Legal aid serves the broader public interest by promoting good governance, accountability, and the rule of law. By ensuring that legal processes are fair, accessible, and transparent, legal aid helps build public trust in the justice system and strengthens democratic institutions. Legal aid also contributes to the resolution of disputes, the prevention of conflict, and the promotion of social cohesion, thereby fostering a more just and harmonious society.

In conclusion, the principle underlying the general obligation to provide legal aid in non-criminal matters is rooted in principles of justice, equality, fairness, and social inclusion. Legal aid ensures that all individuals, regardless of their financial means or circumstances, have equal access to justice and the legal system. By upholding this principle, societies can advance the rule of law, protect human rights, and promote social justice and inclusion for all members of society.

## **2.6. International and Regional Frameworks Regarding Providing Legal Aid in Non-Criminal Matters**

### **2.6.1. Universal Declaration of Human Rights**

The UDHR, adopted by the UN General Assembly in 1948, sets out fundamental human rights principles that apply to all individuals, including the right to access to justice and legal aid. Article 8 of the UDHR proclaims the right to an effective remedy by competent national tribunals for violations of fundamental rights, underscoring the importance of access to justice for all.

### **2.6.2. International Covenant on Civil and Political Rights**

The ICCPR, adopted in 1966, further elaborates on the right to access to justice and legal aid in non-criminal matters. Article 14 of the ICCPR guarantees the right to a fair trial and legal representation, including the provision of legal aid to those who cannot afford it themselves. States parties to the ICCPR are obligated to ensure that individuals have effective access to legal assistance in civil and administrative proceedings.

### **2.6.3. United Nations Convention on the Rights of Persons with Disabilities**

The CRPD, adopted in 2006, specifically addresses access to justice and legal aid for persons with disabilities (PWDs). Article 13 of the CRPD recognizes the right of PWDs to access justice on an equal basis with others, including the provision of appropriate accommodations, support, and legal aid. States parties are required to ensure that PWDs can effectively participate in legal proceedings and access legal assistance as needed.

## **2.7. African Charter on Human and Peoples' Rights**

The African Charter on Human and Peoples' Rights, also known as the Banjul Charter, is a regional human rights instrument adopted by the Organization of African Unity (now the African Union) in 1981. Here's a detailed review of its provisions related to access to justice and legal aid:

### **2.7.1. Right to a Fair Trial: Article 7**

Article 7 of the African Charter guarantees the right to a fair trial, including the right to legal representation and legal aid in civil and criminal matters. States parties are obligated to ensure that individuals have access to legal assistance and representation to protect their rights and interests in legal proceedings.

### **2.7.2. Rights of Persons with Disabilities: Article 26**

Article 26 of the African Charter recognizes the rights of persons with disabilities and calls on states parties to adopt measures to ensure their full inclusion and participation in society. While the African Charter does not specifically mention legal aid for PWDs, its provisions on non-discrimination and equal protection of the law imply an obligation to provide access to justice and legal assistance for PWDs on an equal basis with others.

### **2.7.3. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol, includes provisions related to access to justice and legal aid for women. Article 17 of the Protocol recognizes women's right to access justice and legal assistance, including legal aid, in civil, criminal, and customary law matters. States parties are required to take measures to ensure that women have equal access to legal assistance and representation.

In conclusion, both the United Nations and the African Charter on Human and Peoples' Rights provide important frameworks for promoting access to justice and legal aid in non-criminal matters. These instruments recognize access to justice as a fundamental human right and emphasize the importance of legal aid in ensuring equality, fairness, and the rule of law. By upholding these principles and obligations, states can work towards building more just, inclusive, and rights-respecting societies for all individuals.

## CHAPTER THREE

### **The Right to Access to Justice of PWDs and Legal Aid under the Ethiopian Legal Framework: The Law and the Practice**

#### **Introduction**

Taking the previous chapter as a spring board, this chapter intended to discuss the right to access to justice from the national law perspective and examine the practice in light of the normative frameworks discussed under the previous and this chapter. With this in mind, this chapter is divided into two broad sections which later divided into further sub sections.

#### **3.1. The Constitution of the Federal Democratic Republic of Ethiopia**

As it is noted above, Ethiopia is a State party to almost all major international and African human rights norms. Therefore, the distinct components of the right to access justice outlined in the above discussed international and regional norms are the integral part of the national laws of Ethiopia by virtue of Article 9 (4) of the FDRE Constitution. Unlike these international and regional human rights frameworks, however, the right to access to justice to persons with disabilities is barely covered in an articulated manner by the national bills of the country. The FDRE Constitution protects the right to access to justice for all persons in a nutshell.<sup>69</sup> With this account, it guarantees the right to initiate any justiciable matter before a court of law and get a decision or judgement by such court.<sup>70</sup> Moreover, the Constitution stipulates that a person may claim justice from courts of law through the representation of an association to which he/she is a member.<sup>71</sup> This dictation of the Constitution has a particular significance for persons with disabilities to enjoy legal aid and representation by experts of organizations of persons with disabilities that they are affiliated to.

#### **3.2. Proclamation on the Right to Employment of persons with Disabilities**

The other piece of legislation that has recognized somehow the right to access to justice of persons with disabilities is the proclamation that provides the right to employment of persons

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<sup>69</sup> FDRE Constitution Article 37 (1).

<sup>70</sup> Ibid.

<sup>71</sup> Id, Article 37 (2).

with disabilities. This Proclamation, proclamation No. 568/2008, is the only exclusive national law of the country in relation to rights of persons with disabilities. It is enacted having the objective of curtailing employment related discriminations committed against this section of the society.<sup>72</sup> The bill exempts persons with disabilities from adducing and proving their claims for any allegation of discrimination that they suffered due to their disability.<sup>73</sup> By doing so, the Proclamation shifts the burden of proof to the defendant employer by departing from the basic procedural norm.<sup>74</sup> further, pursuant Article 10 of the Proclamation, any association or trade union to which an individual with disability is a member or the responsible government body to the execution of laws concerning with the employment rights of persons with disabilities may institute an action on behalf of an individual or a group of persons with disabilities whose employment rights is infringed. These protections have their own positive part to play in the enjoyment of the right to access justice of persons with disabilities in their employment engagements.

### **3.3. The Federal Courts Establishment Proclamation**

The Federal Courts Establishment Proclamation No. 1234/2021 also embraces some safeguards that can fall within the meaning of procedural accommodations. One of such safeguard indorsed in this bill is the obligation of the court to provide a sign language expert as an interpreter to deaf litigants or witnesses.<sup>75</sup> The right to access to language interpreter is guaranteed by the FDRE Constitution<sup>76</sup> and Ethiopian Criminal Procedure Code of 1965.<sup>77</sup> However, the strict application of the entitlement guaranteed by both laws apply only in criminal proceeding to accused persons and neither of the laws make an explicit reference to sign language interpreter. Hence, the explicit recognition of this right to deaf clients by Proclamation No. 1234/2021 rectifies both downsides of the above laws. Moreover, the Proclamation mandates the Presidents of the High Court and First Instance Courts to facilitate with rapid court decision and professional support, among others, to cases of persons with disabilities.<sup>78</sup> Although these protections are limited and

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<sup>72</sup> See, Fed. Neg. Proclamation on the Right to Employment of persons with Disabilities, Proclamation No. 568/2008 Para. 1 and 3 of the preamble.

<sup>73</sup> Id, Article 7.

<sup>74</sup> See in this regard the Ethiopian Civil Procedure Code of 1965, Article 258.

<sup>75</sup> Fedd. Neg. Gaz., Proclamation of the Federal Courts Proclamation No. 1234/2021, Article 31 (3).

<sup>76</sup> FDRE Constitution Article 20 \*7).

<sup>77</sup> Ethiopian Criminal Procedure Code of 1965 Article 126 (2).

<sup>78</sup> Proc. 1234/2021, at note 75, Article 19 (1) (G).

far from covering all the essential procedural accommodations, the proper implementation of these entitlements somehow assist persons with disabilities to exercise their right to access to justice.

### **3.4. Overview about legal aid in Ethiopia**

#### **3.4.1. Models of Legal Aid in Civil Matter in Ethiopia**

##### **3.4.1.1. *Legal-aid service by the Government***

Apart from the constitutionally guaranteed legal representation in criminal matters which is being delivered by the Public Defender Office, the legal aid in civil matter is provided by the Ministry of Justice. The establishment proclamation of the Attorney General ( now Ministry of Justice) prescribes that the office is mandated to conduct litigation by representing citizens who don't have financial capacity to institute civil actions under federal courts. And, this mainly includes women, children, disabled and the elderly.<sup>79</sup>

##### **3.4.1.2. *Legal aid service by lawyers***

The other model for legal aid service is the one being delivered by lawyers who are licensed to practice law. Unlike the previous law which requires 50 hour annual pro bono service, the current law compels every advocate who practice privately or works in a law firm as a partner or an employee to provide pro bono advocacy service for not more than three cases in a year based on the simplicity or the complexity of each case.<sup>80</sup> The service is under this model is provided to the following person:

- ✓ To those persons who can't afford to pay for the advocacy service;
- ✓ To charity organizations and civil societies;
- ✓ To those persons whom courts requests the provisions of pro bono advocacy service;
- ✓ To committees and organizations which work in the advancement, promotion and development of law and improvement of the justice system.

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<sup>79</sup>943/2016 federal Attorney General establishment Proclamation, art.6(4)(E).

<sup>80</sup>1249/2021 Federal Advocacy Service licensing and administration proclamation., Art 31

#### **3.4.1.3. Legal aid by University Law Schools**

Equally to teaching and research, community service is considered as a relevant task of Public Universities. In the realm of legal field, the purpose of the community service is achieved through the provision of legal aid services. With this in mind, nearly all universities provide a legal aid services through their legal aid centers or clinics.

### **3.5. Impediment of PWDs Right to Access to justice in the Ethiopian Federal Courts: A look in to the Practice**

#### **3.5.1. Substantive and Procedural Laws as a Barrier**

As it is noted in the previous section, one of the cardinal rights upheld by the CRPD is the equal recognition of persons with disabilities everywhere as persons before the law.<sup>81</sup> The Convention further underscores the duty of States to recognize the legal capacity of persons with disabilities.<sup>82</sup> Legal capacity, which is an inherent right accorded to all people, consists of two interrelated and inextricable strands i.e. the legal standing to hold rights and to be recognized as a legal person before the law and the legal agency to act on those rights and to have those actions recognized by the law.<sup>83</sup> Hence, the notion of legal capacity is anchored on recognition of these two strands and without which the right to legal capacity cannot be fulfilled.<sup>84</sup>

Although the CRPD was adopted more than a decade ago,<sup>85</sup> laws in Ethiopia endure to have blatant discriminatory laws against persons with disabilities. One of such discriminatory legal grounds that has negatively leveraged the right to access justice of persons with disabilities is the explicit denial of the legal agency component of the legal capacity on the basis of disability. With regard to this, the 1960 Ethiopian Civil Code is the prominent law that embraces a range of

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<sup>81</sup> CRPD Article 12 (1).

<sup>82</sup> *Id.*, Article 12 (2).

<sup>83</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 1 (2014) on equal recognition before the law, para. 14.

<sup>84</sup> *Ibid.*

<sup>85</sup> Fed. Neg. Proclamation to ratify the CRPD, Proclamation No. 676/2010 Article 2. By virtue of this Proclamation, the CRPD is ratified by the House of Peoples Representatives and made an integral part of the laws of the country based on Article 9 (4) of the FDRE Constitution.

stipulations that stripe off the capacity of entering into juridical acts.<sup>86</sup> Although the principal victims of these discriminatory stipulations are those who are intellectually and mentally disabled persons,<sup>87</sup> others with sensory impairments like blind and deaf-mute persons could also be proscribed from enjoying the legal standing capacity on their own affairs.<sup>88</sup> As it is expounded in Article 351 of the Civil Code, the judgment of judicial interdiction is passed by courts and upon this blessing of courts, the legal standing capacity of persons with disabilities is stripped off.<sup>89</sup>

Conforming to this ordinance of the Civil Code, the Civil Procedure Code excludes the legal standing right of persons with disabilities stating that:<sup>90</sup>

“A person under disability may sue or be sued through his legal representative”

By doing so, the law takes away their rights and hand it over to a substitute - legal representative. Accordingly, Article 34 (2) of the Civil Procedure Code set out that:

“Where a person under disability is not represented by his legal representative, the proceeding shall be stayed until a legal representative is appointed in accordance with the relevant provision of the Civil Code”.

Such deprivation of legal capacity and substituted decision-making arrangements prevents and excludes persons with disabilities from participating and handling his case directly in legal proceedings. What is worth noting here is that the exercise of legal capacity is intrinsically connected with the right to access to justice and equally on the other way round, the protection of the right to access to justice reinforces the opportunity of persons with disabilities to challenge deprivation of their legal capacity or the denial or restrictions of their rights that ensue as a result.<sup>91</sup> Deprivation of legal capacity, whether formally mandated or as a result of de facto practice, leads to exclusion from judicial processes and has pervasive effects on the right of

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<sup>86</sup> See **Civil Code, at note 24, Articles 339-388, 1728 and Etc.**

<sup>87</sup> See, for instance, *id*, Articles 339 and FF.

<sup>88</sup> *Id*, Articles 340 and 1728 (3).

<sup>89</sup> See, *id*, Article 351.

<sup>90</sup> The Ethiopian Civil Procedure Code of 1965, Article 33 (1)cum Article 34 (1).

<sup>91</sup> Human Rights Council, at note 55, para. 33.

persons with disabilities to a fair trial under due process of law.<sup>92</sup> Defendants whose right to legal agency is stripped off are therefore often deprived of their right to be heard in person, pursue adversarial proceedings, give evidence or contest witnesses. Such limitations affect the principles of equality of arms and non-discrimination, impeding access to justice on an equal basis with others.<sup>93</sup> Hence, the above-mentioned legal provisos of the Ethiopian Civil Code that proscribe the legal capacity of certain persons with disabilities flouts the fundamental essence of Article 12 of the CRPD.

Ethiopia, as a State party to the CRPD, is obliged to take legislative steps either by decreeing a new enactment or revising existing laws to ensure the compliance of national bills with the content and spirit of the CRPD.<sup>94</sup> Similarly, the CRPD Committee emphasized the need to repeal the legislative provisions that are non-compliant with Article 12 of the convention by its concluding observation to the initial report of Ethiopia.<sup>95</sup> However, the country has not yet taken tangible measures to comply with this international commitment. Rather to the contrary, Ethiopia defended the legitimacy and necessity of the deprivation of legal capacity of the so-called insane and infirm people by its initial report mentioned above.<sup>96</sup> In sum, the reluctance of the country to recognize and respect the legal capacity of all persons with disabilities by abrogating the legislative provisions that go against the ordinance of the CRPD, Ethiopia has continued compromising the right to access justice of these people.

### **3.5.2. Barrier relating to Physical infrastructure of the Federal Courts**

First, at the most basic level of access, physical access to buildings, including courts, continues to be an issue in many countries for people with disabilities.<sup>97</sup> The physical inaccessibility of courts limits people with disabilities from accessing and using legal services in the same way as others in a variety of roles which they may play in the justice system like in capacities of lawyer,

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<sup>92</sup> Id, para. 34.

<sup>93</sup> Ibid.

<sup>94</sup> CRPD Article 4.

<sup>95</sup> **Committee on CRPD Consideration of reports submitted by state parties under article 35 of the convention, initial report of Ethiopia, CRPD/C/ETH/1, para. 25-26.**

<sup>96</sup> Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD), Initial Reports of the Federal Democratic Republic of Ethiopia to the CRPD Committee under Article 35, December 2012, para. 55.

<sup>97</sup> Flynn Eilionóir, Moloney Catriona, Fiala-B. Janos and Echevarria V. Irene, at note 53, p. 10.

witness, victim, defendant, judge.<sup>98</sup> In many cases, lack of accessibility of the physical infrastructure of courts results in the denial of the right to access justice of persons with disabilities.<sup>99</sup>

Accessibility is an essential prerequisite to enable persons with disabilities to live independently and participate fully in all aspects of life.<sup>100</sup> Seemingly with this view, the CRPD incorporated ‘accessibility’ as one independent right. To this end, the CRPD obliges States to take appropriate steps to ensure to persons with disabilities access, on an equal basis with others, to, among others, the physical environment and other facilities and services open to the public.<sup>101</sup> The physical infrastructure of courts need to be accessible to persons with disabilities since the service that they provide is open to the public. Effecting this duty, courts have to take measures, inter alia, putting signage in Braille and in easy way to read and understand forms in relevant parts of the buildings, which may include, elevators, gates of the building of courts, bench rooms, offices of the judges and other supporting staffs, provisions forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate the accessibility of buildings and other services of courts.<sup>102</sup>

Likewise, the Building laws of the country also contain relevant stipulations for persons with disabilities to exercise somehow their right to access public buildings. The Building Proclamation No. 624/2009 in this regard emphasizes that toilet facilities in public buildings should be accessible and available in sufficient number to physically disabled persons.<sup>103</sup> However, this enunciation of the law implies that the law, apart from its limitation to cover the diverse aspects of accessibility, fails to cover the various accessibility concerns of persons with distinct disabilities. Although the Regulation issued to effect the Building Proclamation dictates, among others, that any public building or part thereof has to be convenient to the movement of persons with disabilities, it is also far behind to address the full spectrum of the right to

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<sup>98</sup> Ibid.

<sup>99</sup> Human Rights Council, at note 55, para. 19.

<sup>100</sup> CRPD Article 9 (1).

<sup>101</sup> Ibid.

<sup>102</sup> Id, Article 9 (2) (C) and (D).

<sup>103</sup> Fed. Neg. Gaz. Proclamation on Building, Proclamation No. 624/2009, Article 36 (1) and (2).

accessibility.<sup>104</sup> The Directive to the above Regulation set forth a range of accessibility components that a certain public building needs to fulfill and these general features include, ramps, elevators, entrance, door, toilets, and parking.<sup>105</sup> Despite the above national laws have not sufficiently covered to all components of accessibility, complemented with the provisions of the CRPD outlined above, they can however significantly improve the existing problems of accessibility to the physical environment of the country in general and the accessibility of buildings of the Federal courts in particular to persons with disabilities.

The empirical data collated from KIEs including from the officials of the Federal Courts unfolds the existence of significant gaps in making courts accessible to persons with disabilities.<sup>106</sup> In this regard, the Federal High Court, for example, has four clusters i.e. Lideta, Arada, Bole and Akaki Kaliti clusters and the Lideta Criminal division, Bole and Akaki Kaliti cluster buildings do not have elevator service.<sup>107</sup> Hence, most of the buildings of the Federal High Court buildings are inaccessible, particularly, to physically impaired persons. According to Hiwot, the High Court has arranged benches on the ground of the courts to ensure the service of the court to all persons, including all persons with disabilities. However, the service of the court can hardly be realized by putting in place such facilities alone. Because, apart from the place of the litigation, several tasks to be carried out in the process of the administration of justice and these may include, opening of cases, taking of summonses, lodging of complains, requesting of copies of the decisions of the court and many others. Thus, if these services are provided in the upstairs, and this is the case in most courts, the mere arrangement of benches on the ground will not solve the inaccessibility of Courts.<sup>108</sup> Moreover, despite the principle of undertaking court proceedings is in open courts,<sup>109</sup> judges often prefer to conduct proceedings in their offices<sup>110</sup> and this practice also undermines the purpose of arranging benches on the ground.

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<sup>104</sup> Council of Ministers Building Regulation, Reg. No. 243/2011, Fed. Neg. Gaz., Year 17, No. 71, Article 34 (1).

<sup>105</sup> Building Directive, Directive Number 5/2011, Article 33.

<sup>106</sup> Interview with Hiwot Mamushet, principal Registrar of the Federal High Court, April 13 2023.

<sup>107</sup> Ibid.

<sup>108</sup> See, for instance, the interview with Alembante Yimer, an attorney before all Federal Courts, on June 14 2023.

<sup>109</sup> Federal Courts Proclamation No. 1234/2022 Article 32 (1). See also **the Federal Courts Civil Cases Flow Management Directive No. 008/2012 Article 6.**

The same is true in the Federal first instance courts. The issue of accessibility is the bottle neck to the equal enjoyment of persons with disabilities to services of most First Instance Courts.<sup>111</sup> With this, the service of elevators is not available to most First Instance court clusters.<sup>112</sup> In addition, even in clusters where elevators are available, the service of the elevators are not reachable in some floors like the ‘medium’ floor of Arada cluster.<sup>113</sup> Therefore, unless a different arrangement is set up, the cases entertained by the benches on this floor are beyond the reach of physically impaired persons and others who have health problem to use stairs. Further, even the existing elevators usually are not working for reasons attributable to technical problems, disruption of electric power and lack of stand by power generator and others.<sup>114</sup>

Generally the following key shortfalls are unveiled by this study relating to the accessibility of the physical infrastructure of the Federal Courts:

Lack of provisions of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessing the buildings and other facilities of courts other than in the legal proceedings. To ensure the right to equal access to justice of for persons with disabilities, the availability of guides and readers, for example, for blind/visually impaired clients of the courts are indispensable to file his case, to access the court room where his case is proceeded, to lodge various applications to the officials or judges, to enjoy toilet facilities and many others without encountering significant problem. Likewise, sign language interpreter is vital as an intermediary to facilitate the needs of deaf clients of the court with the personnel of the court. Without such intermediate, a deaf service seeker of a court cannot get what he needs due to communication barriers. In spite of the existence of some volunteers in some courts to provide guidance to the service seekers of courts in accessing a certain office or service of

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<sup>110</sup> Interview with Alembante, at note 111. The personal observation of this author in her professional engagements as an attorney before all levels of the Federal Courts has also confirmed the same.

<sup>111</sup> Interview with Zufan Wolde-Gabrael, Principal Registrar of the Federal First Instance Courts, on June 9 2023.

<sup>112</sup> Ibid. Moreover, the interview with the three non-lawyer clients of the courts also reiterated the challenges that they went through until their cases were disposed due to the limited access to elevators. All of them have a mobility challenge and they use crunch as mobility assistive device and have challenges in using stair cases. Interview, with Bereket Negussie, on June 20 2022, interview with Kassech Tena, on June 17 2022, interview with Yonas Mekonnen, on June 17 2023.

<sup>113</sup> Personal observation of the author.

<sup>114</sup> Interview with Mahlet Tekola, attorney @ law in all levels of the Federal Courts, on June 23 2023.

the court,<sup>115</sup> it is hard to count on such volunteers since they may not have the necessary expertise to deliver the guidance or assistance that a certain person with disability may require and even they may quit the volunteer service at any time.

Lack of signage in Braille and in easy to read and understand forms on court rooms, offices of judges, registrar and clerks, gates of the building of courts.<sup>116</sup>

Sub-standardized ramps to wheelchair user client of the Federal Courts is the other major problem. Most of the available ramps are sloppy and as a result, they are not suitable to go upward or downward smoothly.<sup>117</sup>

Non-existence of accessible toilet facilities: the Federal Courts are farthest away from putting in place toilet facilities to their clients in general and even the limited toilets available in some courts are not accessible to persons with disabilities.<sup>118</sup>

### **3.5.3. Communication and information related barriers to the enjoyment of the right to access justice by persons with disabilities before the Federal Courts**

Apart from the physical access to buildings of courts, access to information and communication is equally essential to access the justice system. It would be meaningless if persons with disabilities could physically access the courtroom, but could not understand or communicate during the proceedings due to the lack of appropriate information and accommodations.<sup>119</sup> Therefore, courts bear the obligation to ensure accessibility of information and communication that facilitates effective participation of persons with disabilities for whatever roles they take in the justice system and in all legal proceedings.<sup>120</sup> To this end, persons with disabilities may require different accommodations depending on the nature and type of their disabilities. In this regard, The CRPD Committee has provided guidance on this issue and has repeatedly noted that persons with disabilities should have access to information on the justice system and in its proceedings and be able to obtain information in accessible formats, particularly providing such information to blind and

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<sup>115</sup> Interview with Zufan Wolde-Gebrael, at note 114.

<sup>116</sup> Interview with Anonymous, legal consultant on the rights of persons with disabilities and attorney @ law in all levels of the Federal Courts, on June 25 2023.

<sup>117</sup> Interview with Alembante, at note 111, and the personal observation of the author.

<sup>118</sup> This is well confirmed by all KIE participants of attorneys and non-lawyer clients of the courts. Moreover, the First Instance and High court principal Registrars admitted as major down sides of the Federal Courts.

<sup>119</sup> General Comment No. 2 of the CRPD Committee on Article 9: the right to accessibility, (2014).

<sup>120</sup> CRPD Arts. 9 (1) (A) and 21 (A) and (B).

visually impaired persons (Braille and audio), deaf persons (sign language interpretation) and persons with psychosocial or intellectual disabilities (Easy Read), or video guides.<sup>121</sup>

The close examination of the national laws of Ethiopia explicates that the country has barely protects appropriate procedural accommodations of persons with disabilities to ensure their access to effective justice before the Federal Courts. The CRPD Committee to the initial report of Ethiopia expressed therefore its concern for the failure of the country to ensure the availability of effective procedural accommodations in law and practice and recommended to the rectification of this deficit of the country.<sup>122</sup> One of the few available procedural accommodation recognized in the national legal regimes of Ethiopia to persons with disabilities is sign language interpreter to clients of the Federal Courts with hearing impairment.<sup>123</sup> Although the Federal Courts at all levels are obliged to organize Interpreters office with complete service,<sup>124</sup> it is not yet realized as far as the sign language interpreters office is concerned.<sup>125</sup> Hence, according to Hiwot, it is hard to find professional sign language interpreters and the High Court is providing this accommodation by calling a woman that she personally came across. What is worth noting about sign language interpreters is that the availability of sign language interpreters is not sufficient during justice proceedings, they must be proficient in legal terminology to ensure full understanding for the sign language user. This can be undertaken in collaboration with Deaf people's representative organizations.<sup>126</sup> Therefore, it is always necessary to take all precautions to ensure the availability of competent enough sign language interpreters to sign language users in all proceedings.

Further, the analysis of the collected empirical data discloses the following gaps on procedural accommodations relating to the accessibility of communication and information in legal proceedings before the Federal Courts:

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<sup>121</sup> Flynn Eilionóir, Moloney Catriona, Fiala-B. Janos and Echevarria V. Irene, at note 53, p. 12.

<sup>122</sup> **Committee on CRPD Consideration of reports, at note 93**, Paras. 29-30.

<sup>123</sup> Federal Courts Proclamation No. 1234/2021, Article 31 (2).

<sup>124</sup> Id, Article 31 (4).

<sup>125</sup> Interview with Hiwot Mamushet, principal registrar of the Federal High Court and Zufan Wolde-Gebrael, Principal Registrar of the Federal First Instance Court. According to the two officials of the Federal Courts, they cannot hire qualified sign language interpreters in their respective levels of the Federal Courts due to the low amount of salary allocated to the job position.

<sup>126</sup> Flynn Eilionóir, Moloney Catriona, Fiala-B. Janos and Echevarria V. Irene, at note 53, p. 38.

Non-availability of communications and information of the legal proceedings of the Federal courts in accessible formats to blind/visually impaired clients: the Federal Courts fundamentally employ hard copy communication means in legal proceedings and these, inter alia, include, pleadings in civil proceeding like statement of claim and defense, memorandum of appeal and respondent, amendment of pleadings, and petitions in search of copies of various orders, judgements/decisions and many others. Likewise, in criminal proceedings, charges, memorandum of appeal, summonses and others are presented to the court and parties in litigation in hard copies. This is a cumbersome means of communication to blind/visually impaired attorneys, public prosecutors and other legal professionals since it makes them dependent on human readers to understand such communications and to carry out their professional responsibilities in the right manner. Moreover, this obliges, particularly attorneys, to incur additional expenses to the payment of readers compared to non-blind/visually impaired professionals.<sup>127</sup> With regard to translations of court judgements/decisions to easy read format, the Constitutional Court of Colombia and the Supreme Court of Mexico called for the translation of judgments concerning the rights of persons with disabilities into easy read formats for the benefit of the petitioners and other persons with intellectual disabilities.<sup>128</sup>

Lack of suitable court room settings to blind/visually impaired parties in litigations to refer and take notes using their personal computer or other gadgets in the course of proceedings. Non-blind/visually impaired parties can easily refer by looking at notes that they prepared in hard copy and also take new notes in the course of litigations. However, the current settings of the court rooms of the Federal courts are not equipped with appropriate tables to use laptop computer or other technologies so as to enable all parties in proceedings including blind/visually impaired litigants to refer or take note in proceedings on an equal basis with others.<sup>129</sup> In bridging this gap, blind/visually

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<sup>127</sup> Interview with Mr X, at note 119, interview with Anonymous, at note 117 and personal observation of the author.

<sup>128</sup> Human Rights Council, at note 55, para. 22.

<sup>129</sup> Ibid. The same is noted by all judges participated in this study. With this, the three High Court judges similarly noted that elderly litigants request the court to allow them to sit down and take notes while opponent parties are lodging their cases. Interview with Dememew Shiferaw, Federal High Court judge in

impaired lawyers may request support from their assistants and some courts do not allow such interaction in proceedings<sup>130</sup> needless to say this would undermine the equal participation of blind/visually impaired lawyers before court proceedings.

Failure to provide priority to clients with disabilities to services of the Federal Courts: as it is highlighted above, the Federal Courts have poor accessible physical infrastructure facilities like toilets, especially to persons with disabilities. Hence, should clients with disabilities are not provided priority in the services of courts, they may be exposed to other health complications. Although this accommodation is said to be protected<sup>131</sup> it is not practiced uniformly by all Federal Courts and on regular basis by all judges.

Lack of early preparation by judges before the hearing date and take appropriate precautions to ensure the proceeding to keep on according to the plan without further adjournments: one of the key responsibility of judges is be cognizant of upcoming proceedings and the relevant accommodations needed for running of the proceeding as planned.<sup>132</sup> Accordingly, judges need to check, for instance, whether a sign language interpreter is required for the proceeding before the date fixed for hearing. However, the Federal First Instance and High Courts' Principal Registrars and the judges exposed to interview for this study set out that proceedings are adjourned when judges learn the need of sign language interpreter on the date adjourned for proceedings.<sup>133</sup>

Such unnecessary adjournments have negative ramifications on the speedy disposal of cases to the dismay of persons with hearing disabilities.

Challenges in serving summons is the other problem that persons with disabilities are experiencing. Based on the current practice of courts, a plaintiff in civil proceeding is required to serve summons to the defendant, and both parties in civil litigations and the accused in criminal cases are required to do the same to their witnesses. It would be a cumbersome duty to persons with disabilities to undertake such tasks due to their impairments and the inaccessibility of the general environment. As a result, most of the

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the criminal division, on June 13 2023, Yohannes Afework, Federal High Court Judge in the criminal division, on June 15 2023 and interview with Idosa Chala, Federal High Court Judge, on June 15, 2023.

<sup>130</sup> Interview with Mr.X, at note 119.

<sup>131</sup> For instance, interview with Hiwot Mamushet, at note 109.

<sup>132</sup> Federal Courts Civil Case Flow Management Directive **No. 008/2021, Article 17(11) (2) (A)**.

<sup>133</sup> All the interviewed judges and the two Principal Registrars of the Federal First instance and High Courts.

time clients with disabilities request the cooperation of courts to order different governmental institutions like the police for the service of summonses on their behalf.<sup>134</sup>

### **3.6.7. The state of legal representation of persons with disabilities before the Federal Courts**

Needless to say that the other procedural safeguard essential to the enjoyment of the right to access justice is the availability of quality legal assistance and representation. Nonetheless, the CRPD failed to explicitly articulate this component of the right to access to justice under Article 13. If we however understand the right to access to justice as a right of ‘meaningful access’ held and enforceable by individuals, then legal representation is necessary to fulfil this right as it is expounded in different international and regional formal human rights standards.<sup>135</sup> Building on the general framework of the UNCRPD to ensure for non-discrimination and equality by providing accommodations, the right to legal representation is clearly included under article 13,<sup>136</sup> and it covers the right to access free legal aid.<sup>137</sup>

In relation to persons with disabilities, whether with respect to criminal proceedings or in civil matters access to justice is most often denied as a result of lack of access to, among others, legal aid.<sup>138</sup> Albeit it is limited to accused persons, the FDRE Constitution outlines the right to access to legal assistance or representation.<sup>139</sup> In line this Constitutional provision, the Government has the duty to furnish a lawyer to indigent accused person if the court is of the opinion that miscarriage of justice would befall should the prosecution keeps on without legal representation.<sup>140</sup> With this, the practice of the Federal courts unveils that accused persons are enjoying legal representation by public defendants upon their request or by the direction of judges to this effect taking into account the severity of crimes or entailing punishment of the

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<sup>134</sup> Interview with Yemisirach Kinfu, Judge of family cases in the Federal First Instance Court, Arada cluster, on June 29, 2023.

<sup>135</sup> see, for instance, ICCPR, Articles 2, 3, 14; Human Rights Committee, General Comment No 32 (2007) on the right to equality before courts and tribunals and to a fair trial; ACHPR Article 7.

<sup>136</sup> Human Rights Council, ‘Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples: Restorative Justice, Indigenous Juridical Systems and Access to Justice for Indigenous Women, Children and Youth and Persons with Disabilities: Study by the Expert Mechanism on the Rights of Indigenous Peoples’ (7 August 2014) A/HRC/27/65 para 62

<sup>137</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 1 (2014) on equal recognition before the law, para. 38.

<sup>138</sup> Human Rights Council, at note 55, para. 19.

<sup>139</sup> FDRE Const. Article 20 (5).

<sup>140</sup> Ibid.

crimes that they are charged with.<sup>141</sup> Given the limited communication opportunities, it is highly implausible for accused persons with disabilities to know and raise this protection compared to others.

Apart from criminal cases, persons with disabilities may have access to legal aid from different governmental and non-governmental organizations fundamentally upon adducing an evidence that avers their financial inability to hire private attorney. The primary institution in this regard is the ministry of Justice, and according to Fikadu, the directorate of the ministry provides legal aid services to vulnerable groups, including persons with disabilities, in two ways, i.e. directly by its public prosecutors or by referring cases to attorneys based on the pro bono scheme.<sup>142</sup> The Directorate, for the last 11 months (from the first of July,2021-to the 30th of May, 2023), provided legal aid service for 719 people and 40 of whom are persons with disabilities.<sup>143</sup> In addition to the Ministry of Justice, civil society organizations like the Ethiopian Lawyers with Disabilities and the Ethiopian Women Lawyers Associations deliver free legal aid, including representation in court proceedings, to peoples who belong to the group that they work for.

Presidents of the Federal First Instance and High Courts are mandated to facilitate with professional support to, inter alia, clients of the courts with disabilities.<sup>144</sup> The law silently passed about such facilitation to clients of the Federal Supreme Court with disabilities. In order to be able to execute the facilitation in line with the instruction of the law, the presidents of the two levels of courts are required to know and make the necessary collaborations with institutions that provide free legal service. However, any of the interviewees did not raise about the existence of such collaborations.<sup>145</sup> Thus, until a system is designed and implemented to this effect, the right to access justice continues to be jeopardized to those persons with disabilities that do not have the information about these free legal aid providing organizations.

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<sup>141</sup> Endris Muhammed, 2021), Protection of Accused Persons with Hearing and Speech Disabilities under the Ethiopian Criminal Justice System, Ethiopian Journal of Human Rights, p. 18.

<sup>142</sup> Interview with Fikadu Demisie, Ministry of Justice Licensing of Attorneys and Free Legal Aid Directorate Director, on June 6 2023.

<sup>143</sup> Interview with Fikadu Demisie, above.

<sup>144</sup> Federal Courts Proclamation No. 1234/2021, Article 19 (1)G).

<sup>145</sup> See, for instance interview with Habtamu Arefaynie, at note 97. He emphasized that there are some times that he may inform some of the clients of the court such institutions by his own initiation if he foresees the happening of miscarriage of justice.

### ***3.6.7.1. Lack of adequate personnel***

It is true that the provision of legal aid service needs adequate human resources. Yet, the empirical research revealed that the legal aid services being delivered by the government suffered from lack of human resource. It has come to the attention of the researcher that there is high turnout of prosecutors that engaged in providing the service. In some cases, this has also been true when it comes to the legal aid service delivered by university legal aid centers- law schools are understaff.

### ***3.6.7.2. Lack of management and supervision***

This finding pertains to the legal aid service by lawyers. Currently, the MOJ fails to put a mechanism to monitor and supervise the pro bono service delivered by the lawyers.

### ***3.6.7.3. Types of services and criterion for the provision of the service***

The provision of legal aid ranges from the mere advice to court representation. Yet, the legal aid by the government confined itself only to court representation. It neglects cases that don't need legal representation. Aside this, the legal aid by the government is also fraught with a problem regarding to whom the service should be delivered. Art 31 of the Proclamation provides that the government legal aid service is to be delivered citizens who don't have financial capacity to institute civil actions in federal courts especially women, children, disabled and the elderly. The problem with this stipulation is that it related the service with financial capacity alone disregarding disability alone as a vulnerability situation. Disables persons disregarding their financial capacity needs representation and this is what the spirit of the CRPWD.

## 4. CHAPTER FOUR

### CONCLUSION AND RECOMMENDATIONS

#### 4.2. Conclusion

The right to access to justice is not a mere standalone right; instead it is an instrumental right that serves to protect other rights. It is just a get door for the promotion and protection of other rights. Despite that the right to access to justice is an important right for everyone; its importance takes an imminent place when it comes to vulnerable groups such as PWD. With this in mind, the CRPD comes into the picture by providing the right to access to justice of PWD. It, among other things, provides what the right means from the perspectives of PWD. And, it also prescribes measures that need to be taken in the realization of the right to access to justice. Ethiopia, as in other international instruments, was in the forefront in ratifying the above mentioned convention. This research endeavored to show the state of the normative and institutional frameworks that pertains to the right to access to justice of persons with disabilities in the setting of the federal courts. In order to accomplish this grand objective of the research, the research intended to answer four basic questions.

The first question is: what are the issues of access to justice regarding persons with disabilities? The thesis demonstrated that, the issues of access to justice in the context of PWD are pertains to physical accessibility of courts; accessibility of Laws and provision of legal aid in different schemes.

The second question, for which the paper attempted to provide an analytical answer, is whether the current laws and institutions in Ethiopia are adequate to address the issues of PWD regarding their right to access to justice. In order to answer the question, the research had consulted different laws having a bearing on the issue and also made a personal observation to the premises of the different layers of the Federal Courts.

A scrutiny of the laws and an observation unfolds that the existing legal and institutional frameworks are full of pitfalls. The country apart from ratifying the CRPD has taken any measures necessary for the implementation of the convention- protection and enforcement of the

right to access to justice of PWDs. As it stand now, both the Civil Code and the Civil Procedure Code runs against the right of PWDs. Both legal instruments prevent the legal capacity of PWDs to entertain their matters in the courts of law by themselves. As this close the very gate of access to the courts, its repercussion would comprehensively extend to the right to access to justice of PWDs. In the realm of accessibility, access to Laws has also been an impediment for PWDs. It is obvious that laws are required to be availed to everyone in order to create compliance. Yet, as the empirical data observed laws are not accessible for PWDs in their ways. A case in point is no law exists in a brain from.

The research also unveiled that, the physical infrastructure of Federal Courts are not suitable for PWDs. Mechanism that allow PWDs to have access to buildings are inexistent in most Federal Courts. Mechanism such as ramps is not available.

The third research question is, is legal Aid adequately provided to PWDs in civil proceedings with a view to enhancing the right to access to justice of these persons? The research has answered this question chiefly based information gathered through interviews. In this study, the researcher finds legal aid in civil proceedings in general and legal aid to PWDs, in particular, is the most overlooked area. The prevailing legal framework on legal aid in the country pertains to criminal matters. The only legal aid scheme available on civil matters is the one provided by the Ministry of Justice through the vehicle of public prosecutors and lawyers probono service.

As the respondents of this research revealed, the existing mechanism of providing legal aid on civil matters are fraught with several bottleneck. To mention just the few, the system suffers from adequate human capital and not particular to the needs of PWDs.

In sum, the right to access to justice of PWDs in Ethiopia leaves much to be desired and the prevailing legal and institutional frameworks are not tailored to the needs of PWDs.

## **4.2. Major Findings**

In the course of conducting this research, the following have been the major findings:

1. Despite that Ethiopia ratifies the CRPD, no enforcement mechanism including implementing law is put in place. Nor, it does have a policy on the matter.
2. The Civil Code and the Civil Procedure Code are obsolete for the needs of PWDs and are not crafted in their context.
3. The governing laws that are being implemented in the Federal Courts are not accessible to PWDs.
4. The buildings of the federal courts are not suitable for use by PWDs. Particularly; there is no ramp and elevator.
5. The scope the service in provision of legal aid for PWDs is very narrow and not in line with the needs of PWDs.
6. There is no sign language interpreter in the federal courts. Nor, is there any communication tool such as Braille in the court premises.
7. The research also finds out that there is lack of human resource in the provision of legal aid for PWDs.

### 4.3. Recommendations

It is admitted that formulating a set of rules and building up of institutions which are required by the need of PWDs would not be an easy task for the country. But, the foregoing analysis made it clear that it is possible to do so. Consequently, the following recommendations are worth forwarding in order to protect the right to access to justice of PWDs in Ethiopia:

- ✓ The government specifically the legislature should repeal the provisions of the civil code and the civil procedure code that affects the right to access to justice of PWDs.
- ✓ The legislature in the new law should recognize the full legal capacity (both the legal agency and legal standing) of all persons with disabilities regardless of the type or solemnity of the impairment.
- ✓ The Federal Supreme Court should enforce the government building laws in relation to physical accessibility of buildings of federal courts..
- ✓ The federal supreme court, with the mandate vested to it by the federal courts proclamation, should issue a directive that enhances the right to access to justice of PWDs .
- ✓ The Federal Supreme Court should ensuring newly leased buildings of courts be accessible to persons with disabilities.
- ✓ Undertake the necessary adjustments to buildings of courts which are currently in service, and such adjustments may include:
  - Arranging court rooms on the ground of buildings of courts which are proved be accessible and ensure proceedings undertaken always in such court rooms,
  - reconstructing ramps based on the right standard by consulting experts in the field,
  - Affixing braille signage on the main gate of the building of courts, elevators, doors of offices of officials, judges, registrars and other supporting personnel of courts,
  - Providing live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessing the buildings and other facilities of courts other than in the legal proceedings,
    - Facilitating standardized toilet and washing rooms,
- ✓ The Federal Courts need to put in place communication and information facilities to clients of the courts with disabilities and in this regard:

Ensure access to communication and information to persons with disabilities in formats that they are comfortable with;

Ensure suitable court room settings to blind/visually impaired parties in litigations to refer and take notes using their personal computer or other gadgets, and these may include, tables which are fit enough to put laptops or other gadgets on and to take or refer note while standing in proceedings, arranging power devices to connect laptops and others;

Arrange a mechanism that carries out serving summonses to defendants or witnesses when the plaintiff is with disability and request the cooperation of the court to this effect;

Ensure access to qualified and competent sign language interpreters, including in legal jargons, for sign language user clients of the Federal Courts;

Ensure priority rights to clients of the Federal Courts with disabilities and to this effect, to design and implement a system useful to identify the files that involve persons with disabilities, and this may be using different markers, and to put in place monitoring mechanisms to the proper and consistent running of such right;

- ✓ Mobile Legal Aid Clinics should be introduced for PWDs.
- ✓ Telelegal services, including phone consultations, video conferencing, and online legal clinics should be introduced.
- ✓ The scope of the legal aid service should encompass a wide range of legal assistance, including: Legal Advice; Legal Representation; Document Preparation; Mediation and Alternative Dispute Resolution; Facilitating negotiations and resolving disputes outside of formal legal proceedings.
- ✓ Legal aid programs are funded through a combination of public and private sources, including government appropriations, grants, donations, and pro bono contributions from legal professionals.
- ✓ The federal Supreme Court should provide trainings both to administrative staff and judges on different aspects of the right to access to justice of PWDs. For this to happen, it is suggested to make collaboration with NGOs working on the area.
- ✓ Finally, this research recommends prospective researchers to carry out further studies particularly on the mechanisms of providing legal aid to PWDs in civil matter.

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