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**ELECTORAL PARTICIPATION AS A FUNDAMENTAL POLITICAL
RIGHT OF PERSONS WITH DISABILITIES IN ETHIOPIA; CRITICAL
EXAMINATION OF THE LAW AND THE PRACTICE**

By: - Shimels Sisay Belete

10 June 2011

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*A Thesis Submitted in Partial Fulfillment of the Degree of Master of Laws
(LLM in Human Rights Law) to the School of Law*

Addis Ababa University

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June, 2011

Declaration

I, **Shimels Sisay Belete**, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that secondary information used has been duly acknowledged in this dissertation.

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Dedication

This dissertation is dedicated to those who became voiceless while they can vote; to those who are disfranchised while they can take part in the government of their country and to those who are left out of the political game while they can be competent actors and role players as members to political parties; just on the mere reason that they are persons living with disabilities of various types.

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Shimels Sisay Belete

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List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AEUP	All Ethiopians Unity Party
APAP	Action Professionals Association for the People
AU	African Union
CBR	Community Based Rehabilitation
CEDAW	Convention on the Elimination of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	United Nation Convention on the Rights of Persons with Disabilities
CUD	Coalition for Unity and Democracy
DoFE	the Declaration on Freedom of Expression
ECtHR	European Court of Human Rights
EDP	Ethiopian Democratic Party
Efc	European Foundation Center
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
ESDP	Ethiopian Social Democratic Party
FDRE	Federal Democratic Republic of Ethiopia
FRA	European Union Agency for Fundamental Rights
HPR	the House of Peoples Representatives
HRC	the Human Rights Committee

ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
IDC	International Disability Caucus
IDEA	Institute of Democracy and Electoral Assistance
IFES	International Foundation for Electoral Systems
JICA	Japan International Cooperation Agency
MDAC	Mental Disability Advocacy Center
NGO	None Governmental Organization
OAU	Organization of African Unity
OPC	Oromo Peoples' Congress
PWDs	Persons living with Disabilities
StRE	Standard Rules on the Equalization of Opportunities for Persons with Disability
TDVA	Tigrayan Disabled Veterans Association
TPLF	Tgriyan Peoples' Liberation Front
UDHR	United Nation Declaration on Human Rights
UJD	Unity for Justice and Democracy
UN	United Nation
UNECA	United Nation Economic Commission for Africa
WHO	World Health Organization
WPA	World Program of Action concerning the disabled

Abstract

In the 21st century where people are becoming the ultimate sources of political power, it is hard for a country to call itself as a democracy without maintaining participatory and inclusive political environment in its polity. Though it is apparent that politics and political participation starts at home and ends elsewhere at different levels, active involvement of citizens as voters and candidates in elections and effective participation as members of different political parties can be seen as a commonly known manifestations of political participation.

With these points in mind, this paper is intended to scrutinize the political role of persons with disabilities that account around 10% of the total population in the Ethiopian politics only to the extent of their participation as voters, candidates for elections and as members of different political parties. Accordingly, the research identify that people with disabilities have not been participating in the past four elections conducted in the recent years history of the country. All these marginalization are attributed to the attitudinal, legal, institutional, financial, infrastructural, technical and related factors as barriers. Though there are conceptual transformations in approaching disability from the medical and charity perceptions to those of social and human rights approaches at the international level, the country does not seem to cope up with such changes. Again, though there are human rights instruments recognizing the political participation in general and electoral rights of PWDs at different level, these instruments are not serving as effective guarantees to ensure the rights of these groups of people.

Taking into consideration of these challenges, the author suggested valuable recommendations. Most importantly, the need to come up with accurate and well researched disability census data record system, the enactment of disability specific national election law that can accommodate the specific needs of these people in exercising their electoral rights, introducing the quota system, special funding incentives and the general awareness and attitudinal changes are the primary steps that the country has to employ so as to alleviate the political participation of these people one step forward in the future electoral tournaments of the country.

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CHAPTER ONE: INTRODUCTION

1.1 Introduction

It has been repeatedly declared in various publications especially in the reports of the World Health Organization (here in after WHO) that, there are Persons living with various types of disabilities (here in after PWDs) the total number of whose is counted as 10% of the world population.¹

The situation in Ethiopia becomes more striking when we think of the prevalence of the various factors to disability like poverty, war, transmitted diseases and the lack and inaccessibility of protective and rehabilitative health services in the country.² Accordingly, even though there is no authoritative and updated quantitative data in responding to the “how many” question, it can be said from the prevalence of the above causes of disability in the country’s reality that the estimation of the WHO will apply to the Ethiopian context.

On the other hand, whatever the exact number of the estimation may be, especially in the last 25 years, in different jurisdictions and in different level, there has been an immense attitudinal, legislative and institutional moves towards the reconsideration of the place “where” and the situation “how” these people were acknowledged in the community compared with the non-disabled. In the earlier times, PWDs were seen as the unluckiest and hopeless groups in the society. They were not considered as if they have rights and if any, it was limited to humanitarian assistance. Today, the international community is progressing itself with the conceptions of the social and human rights approaches to the needs of these people. Ideas are emerging on how to treat PWDs as if they are holders of all the fundamental human rights as equal as the non-disabled. Accordingly, we have international, regional and national human rights instruments with an objective of addressing different issues in relation with disability and

¹ . As cited in various publications et; al, Gerard Quinn and Theresa Dagner, *Human Rights and Disability; Understanding the Current Human Rights Instruments in the Context of Disability*, 2002, Andrew Bymes : *Human Rights and Disability, From Exclusion to Equality*, HOCHR, *Monitoring the Convention on the Rights of Persons with Disabilities* 2010. Etc.

² See, Japan International Cooperation Agency (JICA), *Planning and Evaluation Department, Country Profile* (Ethiopia), 2002, available www.ecdd-ethiopia.org, (accessed on 20 November 2010).

PWDs in all economic, social, cultural, civil and political affairs of the society. These positive measures and progressive understandings on the issues of PWDs are expected to bring visible changes in the overall lives of these people including their political role in their country. Ethiopia should not be an exception to these advancements being a country which is a party to almost all international and regional human rights instruments.

However, most of the dialogues, arguments and special attentions (if any) concerning PWDs are more of the health, rehabilitation, economic assistances and related aspects. These seem the major concerns that attract the politicians, civil societies, adjudicatory organs and even PWDs themselves. Such dictations are the direct reflections of the welfare and medical approaches which perceive disability as the concern only to physicians and PWDs as objects of rights who are dependent and burdens to the productive section of the society.

The golden and the most instrumental right for the visibility of other rights; their political and voting rights rarely came before the mind setup of these stakeholders. Their right to participate in the politics of their country does not seem a practically enjoyable and even legally meaningful right for these people. Is it to imply and admit that PWDs are not and cannot be subjects of this right? Is politics and political involvement the untouchable game for these considerable sections of the society?

Therefore, as a reaction to this neglect, the slogan “nothing about us without us!” has evolved which is the prevailing attitude of invoking the participation of PWDs equally raised to challenge the political marginalization of these people. This motto should not be provoked only to justify non- political and charitable rights alone.

In his presentation, Phitalis Were Masakhwe had to say this: “those that captain the ship of the state invariably control and manipulate the mode of production and its distribution!”³ He tried to stress on the fact that, the right of political participation is not only a right in itself but also a basic tool in realizing the other rights. Therefore, if there are opportunities for these people to accede in the political tournament, there will be a tendency of incorporating other concerns of these people as one of the principal agendas in the national policies and programs. It is also a

³ Phitalis Were Masakhwe, ‘*Persons with Disabilities Must Now Challenge Political Marginalization*’, LCD/UNECA, presentation in the conference held from 20-22 may 2008, New York, available at <http://www.leonardcheshire.org>, (accessed on 15 January, 2011).

good lesson for the society to come up with attitudinal progresses while approaching these people.

Thomas H. Earle and Kristim Bushner, also make an interesting statement concerning the voting rights of people with disability emphasizing that; “no right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens we must live! Other rights, even the most basic are illusory if the right to vote is undermined.”⁴ Accordingly, the author would strongly argue throughout the whole paper that if PWDs are given access to participate and actively involved in the political affairs of their country, it is both the society and PWDs themselves who can be beneficiaries. Therefore, no doubt that ensuring the political and electoral inclusion an active participation of PWDs is a one step forward indication of the democratic culture of a country.

With these general understandings in mind, coming to the situation in Ethiopia, the electoral participation of PWDs in the political affairs of the country does not seem the primary concern of all stakeholders. Despite the infancy stage of the democratic values and the peaceful transfer of political power through the secret ballot, the country has an experience of four electoral seasons after it established the Federal form and Parliamentary system of government by adopting the Federal Democratic Republic of Ethiopian Constitution (here in after FDRE constitution) in 1995.

The point is therefore, to what extent is then the floor opened to PWDs in the Ethiopian politics? This paper will address the extent of the exclusion/inclusion of these people in the political arena especially from the context of their participation in election procedures either by electing their representatives, their right to be elected and their membership in certain political parties. Accordingly, the primary focus of the paper will be of analyzing the political role of PWDs in Ethiopia and mainly of their participation in the electoral processes. Critical inspection of the participation spectrum for these people is important in different ways: For one thing, there are considerable and significant numbers of PWDs in the country. Therefore, excluding these people not to have a “say” in the overall affairs of the country cannot be by no means considered as a sign of democracy and the representative form of government. Secondly, the right to electoral

⁴ Wes berry vs. Sanders, 376, US, 1, 17 (1964), Thomas H.Earle & Kristi M.Bushner, *Effective Participation or Exclusion: the Voting Rights of People with Disabilities*, pol. & civ. Rts. L. Rev. 327 2001-2002.

participation as a fundamental manifestation of political right is recognized as a right to every citizen as a constitutional right.⁵ Thirdly, the country is signatory to most of the International and Regional Human Rights instruments that give recognition to the political rights of PWDs and is duty bound to respect, protect and ensure the exercising of this right by these people. Fourthly, PWDs are the most marginalized sections of the society and societal attitude towards disability and PWDs is at the primitive level.⁶ Therefore, advancing their political and electoral participation can be taken as a primary strategy of diverting such attitudinal barriers. Backed by these justifications; whatever arguments may be raised as to the infancy of our political and democratic culture, the paper will try to show extent of the exclusion and marginalization of these people that account for the 10% of the total population of the country from the political arena as one political deficit.

Accordingly, the whole body of the paper will be based up on the following realities and assumptions:

1. At this moment, we are in the era of perceiving disability as a human rights issue and PWDs are full subjects of all human rights including their political rights as equal as the non-disabled.
2. Many international instruments starting from the Universal Declaration of Human Rights (UDHR) up to the recent Convention on the Rights of Persons with Disabilities (CRPD) clearly affirmed the inherent right to political participation to everyone including for people with disabilities.
3. Ethiopia is a party to these instruments and the Constitution as well as other national legislations clearly recognized the right to political participation as inherent and fundamental right.
4. Though there are no exact quantitative indications, the country is a home of a considerable number of people with disabilities.

⁵ See article 38, *FDRE Constitution*, proclamation no. 1 1995, Adopted December 1994 and came in to force 21st day of August 1995.

⁶ Tirussew Teferra (PhD), *Disability in Ethiopia: Issues, Insights and Implications*, Addis Ababa printing press, 2005, p.57.

1.2 Statement of the problem

In a country where about 10 % of its population is composed of PWDs of many types, measures are supposed to be taken so as to ensure the full and effective participation of these people in the political and electoral life of that country. Without ensuring the inclusion of these people in the major agendas of the country and on specific policy, normative and institutional arrangements that could have an effect on the fate of their life, the notions of equality, democracy, popular participation, and popular sovereignty, free and fair election will not be meaningful values on the ground.

This is the major problem facing the Ethiopian PWDs. Even though it is apparent that there are significant numbers of persons with disabilities in the country, their active involvement in the political and electoral tournaments is insignificant. The challenges can be seen from the perspective of each manifestation of the participation spectrum.

Even though the FDRE Constitution granted the right to vote for every citizen without any distinction, PWDs are not exercising the right as equal as others. The pre, during and post electoral facilities and materials are not adjusted in the way that can accommodate the needs of these people in the exercise of their right to vote. There seems an orthodoxy convention as if PWDs are not competent to vote.

Even the situation is extremely terrible for PWDs while exercising their right to be elected. They are not assumed as if they can lead. The tendency of electing these people as members of the legislative organs of the government in different level seems far from the mind setup of the public.

The same trend seems to happen in the daily functions of political parties. Even though it is apparent that being a member to political parties is the most effective strategy to become an actor in the peaceful political struggle, the doors of these parties does not seem opened to PWDs. As a result, it is very rare to see an individual with disability as a candidate in elections nominating the parties.

What could be the possible causes of these practical challenges? Till now, the country does not have disability specific election law. Even though the FDRE constitution and other national legislations are proclaimed with an objective of ensuring the political and electoral rights of all

the citizens, they are not guaranteeing the accommodative and special needs of PWDs for proper enjoyments of their electoral rights. Accordingly, the simple allegation that the constitution and other instruments recognized this right to every citizen is not securing the practical values of the right to these people. Even the election laws that we have are somehow infected with some conceptual problems being dictated by the earlier medical and charity approaches to disability. Most importantly, the practical, technical, attitudinal and institutional barriers are challenging these people not to have active engagement in the political and electoral tournaments of the country.

Generally, the invisibility of persons with disabilities in the political arena of their own country either by way of voting, by competing for elections or by actively taking part in the political parties of their choice are the major concerns to be addressed in this paper.

1.3 Research Questions

The major questions that this paper seeks to address are “are there free and disability- friendly legal and practical spaces for PWDs in Ethiopia to exercise their right to political participation mainly of their electoral rights?” “Are the right to vote and the right to be elected practically enjoyable rights for these people in the emerging Ethiopian political environment?” These major issues will be addressed with the other task of analyzing the fact and the extent to which this right is guaranteed for PWDs in the International, Regional and National Human Rights instruments to which Ethiopia is under obligation to implement.

In order to address the central question of the paper effectively, the following sub-questions will be given due attention:

1. Does the existing legal frame works (International, Regional and National) give full and effective guarantee for PWDs to enjoy and exercise their political and electoral rights?
2. What are the attitudinal impediments of both the society at large and PWDs themselves which are hindering their political participation during elections?
3. What are the opportunities available for these people to vote and elect the candidate of their choice? Are there possibilities to hear, read and access the campaigns, policies and

programs of candidates? Are there technical and material facilities that could make voting private and with informed decision? Are there incentives and facilities adjusted by the organs like the National Election Boar to make the voting processes accessible to these people?

4. Are they actually exercising their right to contest for elections and to be a member in the legislative bodies of the country at different level?
5. To what extent is membership in the political parties open to them? What is the practice in the parties in nominating PWDs as a candidate to contest elections on behalf of the party they belong? What does the rules of the parties say on this regard?
6. What is the electoral role of Associations of PWDs in the country? Do they observe elections and participate in other related tasks?

1.4 Objectives of the Study

As it is said earlier, the slogan which says “Nothing about Us without Us!” aims at the quest for effective participation and visibility of PWDs in all affairs of the community they belong. However, this slogan is mostly invoked in the non-political aspects of the life of these people mainly on work and employment, health, education and related affairs. Despite the relative successes in these areas, though almost all international, regional and national instruments clearly recognized this right to be enjoyed by every citizen without any discrimination, it is not common to raise such motto in advocating the political aspect of the life of these people. Hence, this right is rarely seen as a right that could be exercised by PWDs in the country.

Therefore, the main objective of this paper will be to scrutinize the extent to which this right is acknowledged in various international or national instruments for PWDs. And then, it investigates the gap between these normative frameworks and the practical inconveniencies hindering these people from enjoying and exercising this right in their real life. Accordingly, the paper will at the end come up with certain findings and recommendations and will indicate some directions so that it will serve as an input by way of making aware both the rights holders and the duty bearers on how this right is to be enjoyed by the Ethiopian persons with disabilities.

1.5 Literature Review

In the experience of other countries, different authors have made certain reflections as to the political participation and the status of PWDs to have a “say” in the political affairs of their country. However, most of these articles and publications mainly focus on the situations in their country’s perspectives with a complete cultural, economical, attitudinal and legal system differences compared with our country.

We may consider some examples of the articles written by Thomas H. Earle and Kristi M. Bushier [*Effective Participation or Exclusion: the Voting Rights of People with Disabilities*], who based their arguments from the perspective of the situations in the United States of America. Others try to address the issue only from the specific type of disability. We may refer some of the publications made in the European union agency for fundamental rights;[FRA, October 2010, *the Right to Political Participation of Persons with Mental Health Problems and Persons with Intellectual Disabilities*]. The publication is prepared to advocate the political and electoral enfranchisement of persons with mental health problems. The book seems cruder mainly in its position of advocating the right to be elected for persons with mental disability. In our country, let alone advancing the political participation of these people, even the issue has not been raised as a primary concern of researchers to analyze the political and electoral participation of those PWDs with mental and intellectual capacity who are denied access to enjoy the right only due to the physical or other infrastructural inconveniencies. Other articles include, *the rights of persons with disabilities* (the U.S American National Council on Disability), *Understanding the UN Convention on the Rights of Persons with Disabilities, 2009* (Marianne schulz) and the Wiliam Rowland article on *Blind People and Voting Methods, 2006*. These materials are essential in the sense they briefly discuss the contents of the rights and try to contextualize the right in to the specific needs of PWDs. However, none of them have made reference to the electoral rights of these people in the Ethiopian politics.

The World Health Organization also made a recent publication on how to empower PWDs in all affairs of the community mainly from the perspective of the Community Based Rehabilitation programs [*CBR Guidelines, Empowerment Components*], this document tries to emphasize on the need to empower PWDs not only from the political angle but to that of the community and social based inclusiveness of these people in all aspects. The best value in this document is

mainly on the fact of its position in empowering these people in all sectors and its impression of provoking the reality that PWDs can play a role in their own interests and in the overall affairs of the community at large.

The Office of the United Nations Human Right Council also published certain documents in contextualizing different international human rights instruments and their applicability in line with the issue of disability and the real needs of people with disabilities in all affairs of their interest. We have publications like [OHCHR (2007), *Disabilities; From Exclusion to Equality, Realizing the Rights of People with Disabilities, Handbook for the Parliamentarians on the CRPD and its Optional Protocol*], [Gerard Quinn and Theresa Degener (2002). *Human Rights and Disability; the Current Use and Future Potential of the UN Human Rights Instruments in the Context of Disability*] and [United Nations (2010), *Monitoring the Convention on the Rights of Persons with Disabilities, a Guide for Human Rights Monitors*] and other related publications are duplicated. However, though these instruments are essential in contextualizing the various documents in responding to the needs of people with disability, there is no specific attention given to the political life of PWDs in the documents. Nonetheless, all these and other related materials will be valuable as inputs in the whole process of the working of the paper. Most importantly, these documents contain brief descriptions on the approaches to disability and they are the primary sources of the author in his task of introducing the conceptual progressive changes that the international community experienced from those of the medical and charity or welfare approaches to disability to those of the emerging social and human rights perceptions to disability and to the special needs of PWDs.

On the other hand, it is also the main task of this paper to refer to the contents and the spirits of the provisions of the different International and regional instruments like the UDHR, ICCPR, CRPD, African Charter on the Human and People's Rights and other relevant instruments mainly in addressing the issue of the extent to which the instruments duly recognized and give guarantee to the rights of people with disability in the context of their political participation. With the same objective, the national legal frameworks including the FDRE Constitution and other election laws of the country will be the principal ingredients in the work of this paper.

In the domestic sphere, little seems to have been written on the issue of disability and the rights of PWDs at large. Even those limited reflections mainly focus on the societal attitudes towards

disability; [like, Tirussew Teferra's (2005), *Disability in Ethiopia; Issues, Implications and Insights*]; this book is published with more attention on the societal and attitudinal issues on disability. In addressing the educational rights of these people in the country, we may refer to Eshetu Alene, [*The Protection of Human Rights of People with Disability in Higher Educational Institutions in Ethiopia* (master's thesis unpublished)]. Concerning the health related rights research work is done by Hiwot, [*The Rehabilitation Rights of People with Disabilities and the United Nations Convention on the Rights of People with Disabilities* (2008, Master's Thesis)]. Still in other areas like employment rights [Shimels Ashagre, *The Enforcement of Employment Rights of People with Disability in Ethiopia* (master's thesis, unpublished) and enforcement mechanism; Elena, *The Role of the Ethiopian Human Rights Commission in Protecting the Rights of Vulnerable Groups; The Case of Women, Children and People with Disability*] are some of the issues that has been raised by the respective authors. However, none of them touched the political and electoral related affairs of these people in the country.

Therefore, the issue pertaining to the political and electoral participation of PWDs has not been addressed by these writers who were appealing to invoke various rights of these people. Accordingly, it is worth reiterating that most of the works have not addressed the issue at hand. In addition to this, those works in other jurisdictions have very limited information on the issue in a more generalized and much comprehensive approach together with the rest of other rights. Moreover, these writings do not contain any reflection on the situation of PWDs and their political participation in the Ethiopian political arena. Hence, this paper will show some of the issues on the difficulties in their political participation and will try to bring them in to picture in the future dialogues and advocacies in creating conducive political environment for PWDs. The paper will fill the informational gap that exist on the issue at hand and it may serve as an input in the future works with an objective of including PWDs in the political and electoral tournaments of the country and enabling these people to contribute their part in the general politics that the country will experience in the future.

1.6 Significance of the Study

The final finding of this paper and the possible recommendations to be forwarded will be of great important for many stakeholders. First of all, it will assess the existing situation of PWDs in

exercising the right and it will serve as an input in the future moves of advocating and lobbying the responsible organs to reconsider the existing laws, policies and practices to come up with disability- friendly arrangements in the coming electoral proceedings. In addition to this, the study will be valuable in raising awareness to PWDs themselves whereby they become fully capable of exercising the right as equal as the non- disabled ones. Moreover, the paper could serve as a point of reference in questioning the attitudinal drawbacks that the community has towards these people. It can also serve as an indicative evidence of the possible benefits of granting political trust to PWDs both in the sake of the general political agendas of the country and to the specific needs directly relevant to these groups of people.

1.7 Limitations of the Study:

The major limitation of the paper will be the difficulty to have well documented and easily accessible statistical data mainly on the total number of PWDs. Specifically, the number of PWDs who can satisfy the normal conditions of age to exercise the right, those who are actually participating and already participated in the recent elections either as a candidate or as a voter, people who succeeded and joined the legislature in the national and regional houses in the last four elections and other related information. On the other hand, the author may face a difficulty of communicating with some PWDs like those with hearing impairment during interviews.

Therefore, the paper is highly dependent on the cooperativeness of various stakeholders like the National Election Board, the Offices of the Speakers of the Federal and Regional parliaments, Offices of Political Parties, Associations of PWDs and the selected PWDs themselves. Due to this difficulty, the findings may not be supported by authoritative exact statistical and numerical representations. In addition to this, the time, financial, physical and geographical limitations may be an obstacle to come up with full and comprehensive result.

1.8 Delimitation of the Study

It is clear that political participation is manifested in different ways which includes the broad range of activities starting from the family to the local, regional, national and even at the international levels. Without denying this fact, this research is restricted in terms of areal coverage, content and sectors in which their participation could be manifested. Accordingly;

- The paper is totally restricted to the political participation of PWDs in the Ethiopian politics.
- It is not intended to address the whole aspects or manifestations of political participation. It is restricted to the rights of PWDs to vote, to be elected and their membership in the political parties.
- It does not assess the situations of other social, economic and cultural participations and involvements.
- The target of the paper is only to analyze the extent of their participation at the Federal Houses. i.e. The House of Peoples Representatives and the House of Federation and in selected regional state councils of the Oromiya, Amhara, Tigray and the Southern Nations, Nationalities and Peoples (here in after SNNP) National Regional States as well as Addis Ababa and Dire Dawa City Councils . Therefore, the paper didn't go further to address the situation in other regions, in the local administrations like kebele, woreda or zonal legislatures and other associational groups.
- The paper also does not cover the extent of their participation at the executive branch and other sectors of the government taking in to account the limited time table to finalize the paper. It is restricted to the extent of their participation in the legislature.

1.9 Methodology

In order to come up with a somehow comprehensive understanding and to respond to the issues raised in the paper, I will make recourse to both qualitative and empirical approaches to the issues at hand. Accordingly, I will refer to the writings of authors, International, Regional and National Human Rights instruments to the extent of their value in addressing the political and electoral participation of PWDs. Other books, journals and internet sources will be used mainly in the literature part of the paper.

On the other hand, especially while analyzing the practical realities as to the political participation of people with disability in Ethiopia, the researcher has made reference to the

available data mainly by conducting interviews with directly relevant stakeholders and the PWDs themselves. For this task, the author has been visiting and in touch with institutions like the Ethiopian Election Board, the selected Federal and Regional Houses and City Councils and the concerned officials, some of the selected political parties leaders, and officials of the different Associations of PWDs as well as some purposefully selected PWDs are interviewed.

1.10. Organizational structure of the paper

Chapter one introduces the primary concern of the paper. After introducing the agenda to be addressed in the paper, the details of the research problem, the questions to be addressed, the resources to be consulted, the scope of the paper, the methodology employed and the objectives and significance of the paper are addressed.

Chapter two covers very general conceptual frameworks about disability and PWDs. Accordingly, issues in relation with the terms to be used, definitional and types related dialogues, approaches to disability and the major justifications in advocating disability as a human rights agenda are addressed. Finally, the chapter ends by summarizing the major points to be noted in its conclusion part.

Chapter three introduces the reader with the general concepts on politics and political participation and what does this right mean to PWDs. Accordingly, definition of politics and political participation, manifestations and the limitations in the exercising of the right are covered. Specific to the rights of PWDs, general concepts on the right to vote, the right to be elected and access to political party membership are dealt under this chapter. Finally, after introducing some points concerning the participation spectrum for PWDs, conclusion is provided to summarize the core ideas raised in the chapter.

Chapter four tries to introduce and contextualize the International, Regional and the National Human Rights instruments and normative frameworks in to a disability-friendly version with absolute focus to the provisions relevant for the political and electoral rights of PWDs. Attempt is made to justify the legal element of this right. Accordingly, the UDHR, the ICCPR, the CEDAW, the ICERD, and the CRPD are analyzed at the international level. As a second part, the relevant African instruments including the ACHPR are assessed. At the national level, the

existing binding legal frameworks are examined with a focus to the FDRE constitution and the Amended National Election Law of Ethiopia.

Chapter five is the principal part of the paper. Detailed analysis is made to examine the practical situation of PWDs in exercising their political and electoral rights in the last four elections held in the country. Accordingly, the participation spectrum as voters, access to PWDs in the federal and regional law making bodies as members and the extent of their participation in different political parties are evaluated. In addition to this, the suggested causes for their exclusion are briefly summarized. Finally the chapter ends with conclusion which dictates the major findings of the practical assessment.

Chapter six as a final part of the paper contains conclusion and recommendations with specific target to the primary stakeholders.

Chapter Two

Disability and Persons with Disabilities; Conceptual Frameworks

2.1 Introduction

In this chapter, some of the conceptual issues about disability and PWDs will be addressed. Accordingly, contents inter alia terminological dialogues, evolving perceptions on disability, justifications for invoking the rights of PWDs, definitional issues and types of disabilities are covered. The chapter is meant to introduce the reader to these fundamental and more general concepts that are deemed to be essential ingredients in any disability issue. Before allotting to the substantive elements on the rights of these people, one needs to have a clear understanding on the proper terms to be used. It is also required to have a clear image on how to approach the needs of these people. If one has a proper conceptual and philosophical back ground on these general concepts, it may not be difficult to react on the subsequent agendas of PWDs. One of which may be the electoral participation of these people as what the whole portion of this paper is focusing on. It is with this objective that the author found it necessary to introduce general conceptual frame works on some of the frequently asked questions about disability and the persons there of.

2.2 Connotations on Terminologies

In every aspect of disability issues, the first point that must be noted is “the terminology” that we use in describing the targeted groups. Historically and practically⁷, we were using terms like “handicapped”, disabled person, mentally retarded, crippled, defect, wheelchair bound, invalid and the like. Even in our country the words we use in calling the PWDs are more nasty and shocking. We may think of Amharic words like *denkoro*, *duda*, *ewur*, *denbara*, *komata*, *dewey*, *shiba*, *kill*, *fuzo* and similar terms. However, such terminologies are not psychologically and morally proper. For one thing, it is important to remember that PWDs are different individuals who do not all act, think or move alike. Therefore group references like “*the disabled*” and

⁷ Not only in practical daily communications, even some binding instruments uses the term “*handicapped*”, see et; al article 13, African charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49 (1990), entered in to force Nov.29 1999.

“handicapped” are not appropriate words. Some of the terms we use are also degrading since these words tend to reflect an intention of disrespect and a feeling of lateness to these people. On top of this, individual’s identity and personality should not be determined by his/her disability. It must be emphasized that, everyone wants to be treated as a person with unique identity, with equal human values, feelings, experiences and should not be called up on his/her disability. Therefore, we have to use terms with appropriate connotations and in the recent documents the clear term is PWDs.⁸ It reflects positive approach by putting people first not “disability”. Other more positive examples includes: “boy who has epilepsy, a woman who use a walker, a person with visual impairment, man with Down’s syndrome” and the like⁹.

Hence, in every dialogue on the issue concerning PWDs, we have to pay attention to the terms we use. Be reminded that, each communications we made and its wordings can affect the psychological set up of these persons. Such positive efforts shall begin from the respect given to the personality and dignified identity of the persons themselves. It is then; our ideas, findings and advocacies on the rights and privileges for PWDs will be credited and can influence all stakeholders and duty bearers including the state.

2.3 Defining Disability and a Person with Disability

Till now, we don’t as yet have commonly accepted definitions concerning the terms “disability” and a “person with disability”. The ordinary dictionaries define disability as “the condition of being unable to perform as a consequence of physical or mental unfitness.”¹⁰ This approach does not match with the current overriding doctrine of the socially constructed model which tends to emphasize the inability to perform due to the social and environmental inconveniences in the society not as a result of the person’s disability. Black’s law dictionary also define the term stating that “the inability to perform some function; an objectively measurable condition of impairment, physical or mental.”¹¹ This approach also seems to understand disability being

⁸. In fact some advocate that, the “disabled” should be used instead of “persons with disability” to highlight the fact that it is the society that disabled the person, see, Ani.B Satz, *Disability Vulnerability and the Limits of Anti-Discrimination*, 83 wash. L. Rev. 513, 2008.

⁹ See more on terminologies “types of disabilities, California state park at p. 4, available at <http://www.washear.org>, (accessed on 29 November 2010).

¹⁰ Elizabeth A. Martin (eds.) *Oxford Dictionary*, 5th edition, Oxford University Press, 2001, p.80.

¹¹ Bryan A. Garner (eds.) *Black’s Law Dictionary*, 8th edition, Thomson West, USA, 2004, p.516.

dictated by the medical and biological approach to the issue which focuses on the disability only to the extent that it can be subject to medical treatment.

According to the Americans with Disabilities Act, an individual with disability is a person who: “Has physical or mental impairment that substantially limits a major life activity or has a record of such impairment or is regarded as having such impairment.”¹² This definition does not seem clear in addressing the exact targeted persons. Again, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities also contains a definition stating that: “the term “disability” means a physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment.”¹³ This approach seems more updated and it admits the role of the society and the environment either as a cause or extra challenges in the daily life of PWDs.

For the International Disability Caucus (IDC), A person with disability is “an individual whose ability to lead an inclusive life in the community of his/her own choice is limited by the separate or concomitant impact of physical, economic, social and cultural environments and/or personal factors that interact with physical, sensory, psychosocial, neurological, medical, intellectual or other conditions that may be permanent, temporary, intermittent or imputed.”¹⁴ Here also, the most valuable current understandings and conceptual perceptions are clearly reflected. Most importantly, the definition is innovative in a sense it tries to approach the persons not the disability. However, its scope seems very wide and it makes it difficult to identify the subjects themselves.

With regard to the international instruments, the UN Declaration on the Rights of Persons with Disabilities stipulated that, “disabled person means any person unable to ensure by himself/herself, wholly or partly, the necessities of a normal, individual and/or social life as a result of deficiency rather congenital or not, in his/her physical or mental capabilities.”¹⁵ This approach is defective in many ways; for one thing improper term “disabled person” is used in

¹² *Supra note*, no.9 at pp.3.

¹³ The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, 1999, can be found at: <http://www1.umn.edu/humanrts/instree/disabilitytreaty.html>.

¹⁴ Marianne Schulze, *Hand Book on the Human Rights of Persons with Disabilities, Understanding the UN Convention on the Rights of Persons with Disabilities* (2009), at p. 24.

¹⁵ UN Resolution no. 3447(xxx) of December 1975.

describing the persons. Secondly, a person is treated as a disabled not because the society and the environment are inconvenient to him/her, but on the ground of his/her physical or mental inability to conduct the daily life in the unfairly settled world that cannot accommodate his/her factual circumstances.

The recently adopted UN Convention on the Rights of PWDs¹⁶ (here in after the CRPD) does not include a definition for the term. Simply, it provides some guidance on the concept of disability by recognizing that; “disability is an evolving concept and that disability results from interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in the society on an equal basis with others.”¹⁷ This approach tends to move away from notions that equated disability to the existence of functional limitations and focuses on the barriers that are hindering the normal interaction of these people with the society and the environment. Article 1 of the Convention also tries to elaborate the term “persons with disabilities” stating as; “those who have a long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on equal basis with others.” From this approach, one can infer that, the rights of these persons and their participation in the society is limited or excluded not because of their having impairment but because of various barriers which might include physical, legislative and policy disregards and ignorance. In fact, still some pose a critique against this statement alleging that the expression is limited in the sense it includes only those who have “long term” physical, mental... impairments. What about those who have “temporary” total or partial impairment?¹⁸ Of course, this may not be a big deal since the statement is not framed in an exhaustive manner.

At this juncture, one might ask the question of why this comprehensive and recent document failed to come up with comprehensive definition of the terms. It is apparent that there are pros and cons when a document comes up with a restricted definition of terms relevant in that document. The same can be said for the position taken by the CRPD. On one hand, providing a definition on disability and PWDs may lead to the risk of leaving out people in need of protection but who are not expressly included in the scope of the definition. On the other hand,

¹⁶ General Assembly Resolution no. 61/106 of December 2006.

¹⁷ See, preamble of the CRPD, paragraph (e).

¹⁸ See Marianne Schulze, *supra note* no. 14, at p. 27.

not having a definition will open the confusion as to who should define the terms. The scope also will remain unclear. This might lead to abusive restriction and states may give narrow scope for the terms in the national legislations just on the mere intention of minimizing the expected responsibilities. In fact, if states are committed, such a fear may not be a danger and even more protective and genuinely framed national legislations and enforcement mechanisms might come in to picture.

When generally seen, disability is an evolving concept and acknowledges the fact that society and opinions within society are not static. Therefore, providing a rigid definition may not easily accommodate these attitudinal changes. Accordingly, the definitional aspect of disability can be treated in conformity with these changes and the convention will remain functional for a longer period together with the changes. On top of this, the convention seems to acknowledge the different socio-economic settings and regional particularities and leave the task of approaching the issue to states as far as they are not in contradiction with the standards recognized in the document.¹⁹

What we have to bear in mind is the fact that; whatever our understanding may be to the terms, whatever scope of limitation we set and in any other decisions, PWDs are one category of the society. We are not talking about the right of someone who came from any other planet. We are referring those with the same dignity, identity of personality and an integral part of our community in general and members of our family in particular. That seems why the Convention tries to illustrate rather than defining “who are persons with disabilities?” we know them since we are living together with them.

2.4 Types of Disability

Here, before dealing with various types of disabilities, it must be clear on the issue of “why is it for?” The main purpose of this classification is not to create a particular category, level, inferiority or priority of individuals by their characteristics so that expecting someone that his/her actions to be in conformity with the perceived images of the group. The sole intent is to increase knowledge and understanding of various types of disabilities so that whole inclusive

¹⁹ Andrew Byrnes et al, *From Exclusion to Equality, Realizing the Rights of Persons with Disabilities*, 2007, at pp. 13.

attitudinal, societal, environmental, legal and cultural transformations will be attained effectively. Having in mind of this objective, many writings²⁰ classify disabilities by employing variety of criteria. For the sake of this paper, the author prefers the classification that take in to consideration of the type of impairment that the person is faced with. Accordingly, we may have about six types of disabilities which include:

1. **Developmental disability:** which is to imply conditions that affects or appear to affect the mental and or physical development of individuals like mental retardation, epilepsy, autism, cerebral palsy and head traumas.
2. **Hearing impairment:** this problem relates to the hard of hearing which includes from the moderate hearing loss, mild hearing loss to those of deaf muted persons. These persons are highly dependent on visual cues for communication relatively with the degree of the impairment.
3. **Visual impairments:** these includes many degrees of visual loss which may be low vision, legally blind and total blind persons the cause of which might be either congenital or accidental.
4. **Mobility impairments:** this includes numerous disabling conditions which affect movement and ambulation which may be caused by accidents, chronic events or other conditions that proceeds slowly from birth.
5. **Learning disabilities:** these are neurological disorders that interfere with a person's ability to store, process, produce information and it creates a gap between a person's ability and performance.
6. **Older adults:** these are not in fact strictly persons with disabilities. But many of old adults may experience mobility and sensory changes and difficulties. It is also clear that, one cause for either of the above disabilities like hearing, visual or mobility problems may relate to the senility and infirmity of the person.²¹

Generally, having a clear understanding on various categories of disabilities will enable us especially of lawyers, to make a clear and whole inclusive interpretation of the laws concerning these people. This will be helpful mainly in redressing the claims of PWDs through genuine

²⁰ . Vera Hendriks, *Visions on Mainstreaming Disability in Development, Intern mainstreaming Disability Program*, Dark and Light Blind Care, veenendaal, the Netherlands. (2009), Pp. 14-15.

²¹ See the details on various Types of Disabilities, California state park *supra note* no.12, pp. 5-36.

interpretation of scope of application of legal guarantees. It is also important to invoke some legislative, executive and policy directions, to expand the protections, respects and assurance for the well-being of these groups.

2.5 Approaches to Disability

Before the emerging human rights perception to disability which is the emerging attitude towards disability and PWDs since the last two decades, the international community has been approaching the various concerns of these people from different sensing. These include the medical approaches, the charity model approaches and the social approach which is currently acceptable conception together with the human rights approach.

The earlier understanding of disability was what we call the medical model approach to disability. This is perhaps the most irrational widespread myth believing that disability is a medical problem that needs to be solved or an illness that needs to be cured.²² A person with disability is somehow “Broken” or “sick” with the need for fixing or healing. It defines disability as a problem and medical intervention as a solution by leaving the duty of fixing it to the medical and the health profession.

The other major misperception is the charity approach of acknowledging disability which puts PWDs as if they are unfortunate and helpless and need to be cared for.²³ This is to be done only on the good will of the society often encouraged by religious institutions to get forgiveness for their sins. This approach totally presupposes the absolute dependency of these people and considers them as burdens to the society.²⁴ It was during this perception that most of human rights instruments were framed providing special needs (instead of equal opportunities) to these people assuming that they cannot cope up with the needs and capacity of the community at large.

In the recent movements, the medical and charity conceptions to disability have given way to the emerging notions of the social approach to disability. This concept understands “disability” as

²² . Human Rights yes!, *Action and Advocacy on the Rights of Persons with Disabilities*, 2009, Discussion Paper, available at <http://www.dpi.org> (accessed, 10 January 2011).

²³ . Bob Ransom, *Missing Voices, An Overview of the Situation and Rights of Children with Disabilities in Africa*, African Child Forum, 2000, at p. 7.

²⁴ . Gerison Lansdown, *A Guide to Using the Convention on the Rights of Persons with Disabilities with the Convention on the Rights of the Child*, Save the Children, 2008, p. 5.

being the social consequence of having impairment.²⁵ Accordingly, the focus of this approach is eliminating the barriers created by the social and the physical environment that suppress the ability of PWDs not to exercise their human rights. Generally, this perception stresses on the fact of recognizing disability as a consequence of the interaction of the individual with an environment that does not accommodate individual's difference and hence impedes the individual's participation in the society.²⁶

Coming to the Human Rights approach to disability, as a current concept of incorporating the needs of PWDs in to the human rights discourse, it is a step forwarded understanding the root of which is the social conception to disability.²⁷ According to this conception:

- PWDs are subjects of human rights law and they are right holders on an equal basis with all people.
- Disability is recognized as a natural consequence of human diversity and addresses the disability specific prejudices, attitudes and other barriers to the enjoyment of human rights.
- It is the responsibility of the society and governments to ensure that political, legal, physical and social environments support the human rights, full inclusion and participation of PWDs.²⁸

It is then with this modern conception that the whole issues to be raised in this paper regarding the political and electoral life of PWDs will be highly incumbent on. Accordingly, the rationales of this approach while justifying disability as a human rights issue will be addressed in the next section.

²⁵ *Ibid* at p. 7.

²⁶ . OHCHR, *Monitoring the Convention on the Rights of Persons with Disabilities*; A Guidance for Human Rights Monitors, New York and Geneva, 2010.

²⁷ *Ibid* at p. 9.

²⁸ . *supra* note, no. 22, at p. 21.

2.6 Justifying the Rights of Persons with Disabilities

Throughout the long history of the world community, PWDs were tended to be viewed as objects rather than subjects in their own rights. The legal protections normally associated with the rule of law were either not applied at all or severely curtailed.²⁹ It is in the recent eras, that the human rights perspective on disability came in to the mind of the international polity.

Bengt Lindquist's speech is a clear reflection of the earlier images of the community: "those of us who happened to have a disability are fed up being treated by the society and our fellow citizens as if we did not exist or as if we are aliens from outer space while we are human beings with equal value, claiming equal rights...disability is a human rights issue! I repeat it is a human rights issue...!"³⁰ This shows how the tendency of perceiving PWDs as problems prevailed instead of viewing them in terms of their rights. This conception has accelerated the invisibility of these persons in all common affairs and the denial of their membership in the community as equal holders of the world history.

Then, the point to be addressed is what essential values and rationales can we invoke to make the issue of disability as the primary concern of the international human rights law so as to bring a positive change? Perceiving PWDs as subjects rather than objects entails giving them access to the full benefits of basic freedoms that most people take for granted and doing so in a way that is respect full and accommodating of their difference. This notion of human value which presupposes human beings as subjects and not objects so that persons with disabilities too, invokes four basic values that creates a space for the development of human spirit. These include; dignity, autonomy, equality and solidarity both in the general human rights and in the context of disability.³¹

2.6.1. Dignity: the quality of being worthy of esteem or respect

As an anchor norm of human rights, the value of dignity stresses on the fact that, each individual is deemed to be of an inestimable value and nobody is unimportant. The value of an individual is to be tested not because he/she is economically, physically or otherwise useful, but because of

²⁹ Gerard Quinn et; al, *Human Rights & Disability, the Current Use and Future Potential of the UN Human Rights Instruments*, 2002.

³⁰ Speech made by Bent Lindquist, Special Reporter on disability of the UN Commission for Social Development, at the 19th Congress of Rehabilitation International, Rio De Jenerio, 25-30 August 2000, Gerard Quinn, *ibid* p. 14

³¹ *Ibid*, pp, 24-29.

his/her inherent self worth. Thus, PWDs have a stake in and a claim on society that must be honored.³² This value should not be dependent on considerations of social or economic utility but on the sole reason that all human beings are ends themselves not the means to the ends of others. We cannot rank people in terms of their usefulness and to screen out those with significant differences.³³

It is this value on the issue of disability which is serving as a root for human rights approach and the interrelated social constructed conception to disability. Here, it is the result of lack of responsiveness by the state and the society to the difference that disability represents.³⁴ The focus should not be on what is wrong with the person but the consequence of the interaction of the individual with an environment that failed to accommodate individual's differences and limits or impedes his/her participation in the society. Therefore, it should be the social, economic, cultural, legal, political and environmental conditions that act as barriers to the full exercise of the rights of PWDs that need to be identified and corrected.³⁵

If someone asks questions like: why these persons are excluded or marginalized from politics, education, and labor and in the general public affair? Is it due to the fact that they are unable to contribute a lot in the political and democratic development of the country? Or is it due to the insufficient, inconvenient and discouraging attitudinal, legal and practical impediments that these people are disfranchised in the political environment? Is it not lack of physical accessibility, negative attitude in the community and other impacts that hinder their participation in elections? Generally, the value of dignity highly dictates that, recognition to everyone as a person should not be conditioned up on the physical and economical usefulness of the person. He/she is a holder of all rights and should have access to enjoy the rights. Therefore, the state and all sectors of the society have to be reminded that PWDs are no longer recipients of charity but they are holders of rights and not objects. This is the approach that the new convention is based upon.

³² Gerard Quinn, *Supra note*, no.29.p.24.

³³ *Ibid* at, p.23.

³⁴ *Ibid* at p.24.

³⁵ See *supra note* no. 24, at p.9.

2.6.2. The value of “autonomy” as an asset for the development of a human self reliance

The notion of autonomy is based on the idea of opening up a free and unforced space for voluntary action based on the person’s conscious. It presumes the capacity for self directed action and behavior. This value intends to imagine a morally free person.³⁶ A person with his/her own independence and liberty is the one who is at freedom and un coerced for a self-directed action and behavior.

In the context of disability, there seem to be some imperfections if the notion of autonomy is to be understood as a means of relieving the duty of assisting PWDs. For one thing, it is not whole inclusive in a sense that we may not always expect a morally free person since we might have persons with mental or intellectual disability who need intervention and control by others just for their own security.³⁷ This may lead the society to be reluctant in protecting the interest of those legally proclaimed incompetent. On the other hand, it is not hidden that the life choices of PWDs are not perceived as worthy of social support as those of the non-disabled on the fact that societies have not done enough to “enable” those with disabilities having of a clear capacity for moral freedom to exercise their rights of self-determination.³⁸ Therefore, this value is invoked in so far as PWDs are in need of their personal freedom and independence. It is just to protect these people from compulsions and other actions that are detrimental to their personal interests. Despite these fears, autonomy is an essential value which stresses that, PWDs should have an access to their choices and should not be the subjects of decisions of others on their fate.

2.6.3. Equality: A Tool for Appreciating Differences

The core premise of this value is that, all persons not only possess inestimable inherent self worth as a dignified entity but are also inherently equal regardless of their differences.³⁹ Thus, from the moral point of view, an arbitral distinction between persons based on race, color, disability, sex... has no rational foundation and therefore invalid. Accordingly, we have to treat everyone equally despite the differences and the dissimilarities should not be grounds for discrimination.

³⁶ See Gerard Quinn, *supra note*, no. 34, p. 27.

³⁷ *Ibid* at p.28.

³⁸ *Ibid*.

³⁹ *Ibid* at p. 29.

Generally, the message behind the value of equality is that, a genuinely equal society is one that has a positive approach to human difference without denying individual differences. Hence, the differences that exist between PWDs and the non-disabled should not be interpreted in the way of conveying inequality in the holding and enjoyment of rights.

2.6.4. Solidarity: As a Means for a Sense of Belongingness

This value reminds the inherent nature of persons as social animals. It acknowledges the mutual ties and obligations that exist between people by virtue of their shared membership of a given political community. Freedom is not elsewhere and it could be tangible only by a substantive social and economic supports.⁴⁰ Therefore, the main purpose of solidarity should be to enhance people for participation in all main streams of the society and PWDs are entitled to social intimacy regardless of the utility of their potential contribution to the society.⁴¹

When generally seen, the values of dignity, equality, autonomy and solidarity are the pillars in the human rights approach to disability. They justify the rational for why PWDs shall be seen as subjects and holders of rights not objects the right of whom is to be determined by others. That is the goal behind the human rights perspective to disability the main objective of which is maximizing the visibility of these persons in all political, economical, social, cultural, legal and attitudinal land marks of the society.

2.7 Conclusion

Since the past two and half decades, the world community has been witnessing multi directional changes in the overall understanding of disability and the attitudes on how PWDs are to be treated and welcomed in the general political, economic, social and cultural affairs in the polity to which they belong. The change begins from the terms that we use to name and call PWDs. In any affairs of these people that we deal with, there has to be care in the choice of proper wordings to describe them. This is because of the fact that each term we employ might reflect the attitudinal impression that one has against these people.

The other progress that the international community progressed is the perceptual experience of approaching disability and PWDs and their corresponding demands as well as their inclusion in

⁴⁰ *Ibid* at p.27.

⁴¹ *ibid* at,p.29.

the communal affairs. These changes have been demonstrated from those of the earlier medical and charity conceptions of disability which perceived PWDs as objects and not subjects of rights; the fate of whom depends on the medical fixations and humanitarian assistances, to those of the current social and human rights based understandings of the concerns of these people. The emerging social constructed and human rights approaches consider PWDs as if they are competent subjects of their fundamental rights and tend to blame the society and the environment for the ineffectiveness of these people in every agendas of the society.

For these attitudinal changes to prevail in the recent years, justifying the rights of PWDs from the notions of dignity, equality, autonomy and solidarity is becoming successful to bring the issue in to the mind setup of the international polity. These changes can be inferred from the emerging reactions through the normative, institutional and declarations of common positions by the political leaders in the international systems and within their own jurisdiction.

Therefore, for effective implementation and feasibility of these changes, the major concern should not be the need for unanimously acceptable definition for the terms. Neither the type of disability nor its cause should be the primary factors in the move towards the need of accommodative protection, respect and fulfillment of the rights of these people. This seems why the recently binding UN Convention on the Rights of PWDs (here in after the CRPD) is designed in the manner of none exhaustively structured provisions containing the rights of these people including the specific duty bearers and their detailed responsibilities.

Chapter Three

Electoral Participation as a Traditional Manifestation of Political Right

3.1. Introduction

It is apparent that politics and political involvement are broad concepts. It might range from the family life to that of the local, regional, national or at the international arenas where there is a need to make a decision and to be part of that decision.⁴² The focus of this chapter and the whole paper is not to scrutinize each and every aspect of political involvements of PWDs. Rather it is limited to the extent of their participation in elections which is one of the commonly known demonstration of one's political role playing either as a voter or as a candidate. This passion of active political participation may be manifested either privately or as a member of a political party.

Accordingly, this chapter is intended to forward some highlights on issues like the meaning, scope and manifestations of political participation without rushing in to the details of the concept. It then clarifies some of the contents of the rights of PWDs, and the values of their involvement as an active electoral participant. To this end, the sections are designed to address issues in relation with their right to vote, their right to be elected and their access to party membership.

3.2. The right to political participation: Definition, Manifestations and Limitations

3.2.1. Definition

Politics is a more spacious concept and it includes the interrelationships between people, between men and women, parents and children, people with and without disabilities and the

⁴² Julie Ballington (eds.), *"The Implementation of Quotas, African Experience"*, Institute for Democracy and Electoral Assistance (IDEA), Quota Report Series, Sweden 2004, p. 125.

operation of a power at every level of human interaction.⁴³ If we understood it more narrowly, it may refer to the activities of governments, politicians or political parties.⁴⁴

Here is also a description reflected by the Committee to the Convention on the Elimination of all forms of Discrimination Against Women (here in after CEDAW) which defines political and public life as “... a broad concept referring to the exercising of political power in particular the exercising of legislative, judicial, executive and administrative power. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women’s organizations, community based organizations and other organizations concerned with public and political life”⁴⁵. The committee tried to show the fact that there is nothing in a daily life of human beings which is completely independent of politics.

The same position is taken by the Human Rights Committee to the International Covenant on Civil and Political Rights (here in after ICCPR) in its elaboration of article 25 of the Covenant. It reaffirms the fact that “the conduct of political and public affairs is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administration powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, regional and local levels.”⁴⁶ Accordingly, the allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs should be established by the constitution and other laws.

3.2.2. Manifestations of Participation in Politics

Then, if politics is a broader concept that accommodate almost all of the daily life of mankind, the right to political participation entails a broad range of activities through which people develop and express their opinion on the world and how it is governed,⁴⁷ and try to take part in

⁴³ WHO, *Empowering Persons with Disabilities, Community Based Rehabilitation Guidelines*, Malta, 2010, at p. 33, available at, <http://www.who.int/hpr/rhb/index.html>, (accessed on the day of 10th of January 2011).

⁴⁴ *Ibid* at p. 34.

⁴⁵ . CEDAW, *General Comment no. 23; Political and Public Life*, paragraph 5.

⁴⁶ . ICCPR; General Comment no. 25, *The Right to Participate in Public Affairs and the Right of Equal Access in Public Services*, art. 25, 07/12/96.

⁴⁷ . *supra note*, no. 42 at p.34.

and shape the decision that affect their lives. If we narrate these activities bearing in mind PWDs, it might range from developing thinking about disability or other social issues at the individual or family level, joining organizations of PWDs or other groups and organizations, and campaigning at the local, regional or national level to the process of formal politics such as voting, joining a political party or standing for elections. Therefore it should be within these contexts that all international, regional or national legal frameworks which recognize the right of every individual including PWDs to participate in politics are supposed to be interpreted and implemented.

Generally the political participation of a person could be demonstrated in different activities which includes but not limited to:

- Participation in elections as a process of the formal politics either by voting or by standing for elections.
- Holding offices at the executive or administrative branch of the government at the local, regional or national and even at the international levels.
- Joining and forming unions, associations or political parties.
- Access to public services on an equal basis without any discrimination.
- Exercising freedom of expression and actively participate in public assembly, peaceful demonstrations and referendums.
- Participation in policy and decision making processes and the like are few manifestations of the political participation of the person.⁴⁸

Despite the fact that the right to political participation is exercised in different ways, it is the view of the author that active involvement in elections is both a “means” and an “end” of minimizing marginalization. As a means of realizing their different rights, PWDs may choose a party or a candidate with better policies and programs that accommodate their different needs in their economic, social, cultural and other affairs of their lives. When they participate as candidates, these people may bring disability and its consequences as one agenda in the overall affairs of the country. That is why active involvement of these people in elections is a means and an effective tool of mainstreaming the fundamental rights of PWDs in their political life. On the other hand, the right to political and electoral participation in itself is an end right. It is the right

⁴⁸ . See article 25 of ICCPR and article 29 of CRPD.

of every citizen to enjoy equal and effective participation in the political tournaments of his/her country. Accordingly, as like every citizen, PWDs also should have a room to exercise this right at every level.

3.2.3. Limitations and the Scope of Political Participation

No doubt that the right to participate in political and public life is a fundamental right that forms one of the foundations of any free and democratic society. This right lies at the core of democratic government in the absence of which forming a social and political order on the basis of the free and full consent of the people cannot be sensitized.⁴⁹

However, as it is briefly analyzed by the HRC committee in its general comment number 25, exercising this right is not without qualifications. The limitation begins by prescribing persons who could be subjects of the right and eligible to exercise it. Accordingly, unlike other human rights and fundamental freedoms which are ensured to “everyone”, the right to political participation and active involvement in elections is granted only to “citizens”.⁵⁰ But once a person is recognized as a citizen of the country, discrimination of any type on any grounds is absolutely prohibited. Therefore, nationality is well known qualification and non- nationals are not entitled to exercise this right.

On the other hand, the committee reaffirms that any conditions which apply to the exercise of these rights should be based on objective and reasonable criteria and the restrictions or suspensions should be on grounds established by law.⁵¹ The committee further illustrated conditions like age and established mental incapacity as legitimate grounds for denying a person the right to exercise these rights. In the view of the author, while age might be an acceptable ground for restricting the different rights under the umbrella of the political participation spectrum, it has to reconsider its position of restricting the right to vote of persons with mental disabilities. For one thing, the committee didn’t clearly note how and by whom such mental incapacity is to be established. On top of this, the side taken by the committee has been dictated

⁴⁹ The National Council on Disability, *The Rights of Persons with Disabilities*, U.S. America, 2001. Available at <http://www.ncd.gov/newroom/publications/2001/publications.htm> (accessed on 27 December, 2010).

⁵⁰ See *supra* note no. 46, paragraph 3.

⁵¹ *Ibid*, at paragraph 4.

by the then medical and charity based attitudes towards disability,⁵² which considered persons with mental disabilities as if they are incompetent, irrational and vulnerable for manipulation by others.⁵³ Currently, such justifications are getting encountered by emerging arguments against these grounds. Accordingly, the committee is required to update this comment in conformity with the emerging human rights and social approaches to disability that give recognition to all PWDs as if they are subjects of all rights including their right to vote. If the restrictions are found necessary, the committee and states which are advocating these restrictions are required to comprehend their positions by convincing and well constructed as well as practically meaningful arguments behind the restrictions.

Generally, the issue of limitations can be summarized in such a way that the exercising of political participation is not absolute. However, the rights may be restricted or suspended only on the grounds that are based on objective, reasonable and legally established criteria like age, nationality and residence, and restrictions prescribed by law.

3.3. Electoral Participation of Persons with Disabilities

As discussed in the previous section, we said that there is nothing free from politics in the daily life of mankind at every level. Therefore, participation in the political spectrum is all about the power which enables a person to make informed choices and the freedom to take action.⁵⁴ Since decisions are made by people with power, in a democratic society the ultimate source of power is political participation. To this end, PWDs are required to be actors in this process.⁵⁵ Therefore, it is the exact time of adjusting all possible facilities for PWDs to have an understanding on the facts of who has the power to make decision and why they have this power.⁵⁶ These understandings may lead them to aspire their roles in the decision making process. With this objective, works have to be done on how to increase courage of these people and mainstreaming disability issues in the politics of the country.

⁵² It has to be noted that the comment has been declared a decade ago on the 7th of December 1996 during which the medical and charity approaches to disability were a working understandings on the issues of disability and the rights of PWDs.

⁵³ See the details of justifications as to why persons with mental disabilities shall be granted of their right to vote, in chapter four, section 4.4.3, at pp 79-84.

⁵⁴ *Supra note no. 44* p. 35.

⁵⁵ *ibid* p at p. 37.

⁵⁶ *Ibid* at p. 39.

This seems why the Ghanaian independence hero Kwame Nkrumah urged his people by his thought “seek ye the political kingdom first and all else will follow!”⁵⁷ It is clear that those that captain the ship of state invariably control and manipulate the mode of production and its distribution. Therefore, PWDs are required to choose either to stay in the inner sanctum of power or forever be expelled from the social and political activities of their country.⁵⁸

Hence, active involvement in the political game of their country would enable PWDs to become actors in every decision making and policy mainstreaming in the general public affairs and in their specific desires. Consequently the playing field should be leveled and should inspire them to aspire for deeper and enhanced political participation. It must be noted that democracy is about numbers.⁵⁹ Therefore these people who share a considerable number in the country’s population must be facilitated to realize their “political Arsenal”.⁶⁰ Accordingly, the state, great political parties and wise political players who know the power of number in the political battle have to fight all electoral threats and discouraging norms that could deter PWDs from realizing their political aspirations.

Then, bearing in mind that all forms of political participations in every affair of the public are essential in the mainstreaming of disability issues in the politics of the country, just for the sake of its limited scope, the paper addresses only the three traditional forms of participations in the subsequent sections. These include voting rights, campaigning for election and access to party membership and the real meanings of these rights for PWDs.

3.3.1 Access to Voting for People with Disabilities

In a democratic society, voting is a traditionally known political right of citizens in the normal process of elections through which a representative or indirect participation in the overall decision making processes of the country is to be effected. Accordingly, access to voting is an essential tool of ensuring the accountability of representatives who hold office for the exercise of the legislative or executive powers vested in them.⁶¹ In a country where there is well established

⁵⁷ . Phitalis Were, *supra note*, no.3 p,12.

⁵⁸ . *Ibid* at p 15.

⁵⁹ Richard Bellamy, *Political Constitutionalism; A Republican Defense of Constitutionality of Democracy*, Cambridge University Press, 2007, p.145.

⁶⁰ *Ibid* at p.147.

⁶¹ See HRC *supra note*, no. 46, paragraph 5.

democracy and popular sovereignty, it is the voice of the people that can assure the power to hold office and to stay exercising that power with a sustained political environment.

The point is then what does this right mean to PWDs? Even though it is clear that every citizen is endowed to enjoy this right, a simple constitutional or other legislative recognition of the right to vote in a general term may not guarantee the enfranchisement of citizens with disabilities in this democratic process.⁶² Therefore, to ensure that PWDs can have access to voting, there are special accommodations that need to be facilitated throughout the seasons of the pre, during and post electoral periods. These facilities and technical assistances vary dependent on the type of disability and its corresponding impediments.

Every effort begins by avoiding and repealing any law or administrative practice (if any) having a discriminatory effect that exclude PWDs not to enjoy their right to vote.⁶³ Hence any laws that disqualify these people on the ground of their disability should be void. On this regard, states have both negative and positive obligations in maintaining this right to PWDs. On one hand, they are expected to refrain from enacting laws that restrict the voting right of these people. On the other hand, they are required to react positively by enacting more disability sensitive election laws that can best recognize the voting rights of these people.

Most importantly, effective and accommodative measures are required to ensure that all PWDs who are entitled to vote are able to exercise that right. This requires ensuring freedom of expression, freedom of assembly, association, and access to information and enabling these people to have an exposure to public awareness programs about elections and the different policies and programs of competing candidates.⁶⁴ Then the sensitive question that comes here is how these rights are going to be meaning full for PWDs. This question demands an independent assessment of the impediments in each type of disability.

For persons with visual impairment, preparing awareness raising audio programs, Braille printed policy programs of political parties and competitors to become aware of their future plans and strategies. There is a need to facilitate direct sessions and face to face discussions and dialogues

⁶² Marianne Schulze, *supra note*, .no. 14.

⁶³ See, HRC comment *supra note*, no. 61, paragraph 7.

⁶⁴ . *Ibid* at paragraph 5.

which may inspire these people to exercise their right to vote. These programs would enable them to be acquainted with the necessary information so that they can choose their preference based up on an informed background.⁶⁵ These are efforts that need to be done prior to election periods. In order to accommodate the needs of the visually impaired at the polling stations, the accessibility of the process, the commitment of electoral authorities, the available technology and the opportunity to be consulted and other methods of attracting these people should be taken into consideration.⁶⁶

Considering, these necessities, countries have been testing different methods.⁶⁷ Some of the methods tested include; voting in front of party representatives, voting in front of an electoral official or at the presence of independent observer. But these methods are not successful and unacceptable since they violate privacy. On the other hand, using Braille ballot is advisable but still open to abuse since it requires the capacity of electoral officials to determine the voter's choice as this method presupposes the assumption that there is a person as a coordinator in the polls who knows Braille language. On top of this, the method is not whole inclusive since all of visually impaired citizens in the country may not be trained the Braille language. Other methods like the use of templates, postal ballot, voting by hand lever and computerized voting are also available options with their own respective defects.⁶⁸

The more practical method of ensuring the voting right of persons with visual impairment is the use of a person of their own choice and this is widely used. But still this method is defective in the sense that it deprives the independence of these people. There is also a possibility for bureaucratic inconveniencies since election coordinators may not be cooperative. This difficulty happens mainly when electoral officials delayed the exercising of voting with the pretext of determining the identity of the assistant and his/her confidentiality and neutrality. However there is one fact that nobody should deny. The secret ballot is a basic political right in a free society and as a precondition of democracy. Therefore, with all the defects and possible fears, person

⁶⁵ . See, Marianne Schulze, *supra* note no.62. at p 115.

⁶⁶ . William Rowland, *Blind People and Voting Methods*, World Blind Union, Position Paper, available at, www.electionaccess.org/discussion_paper.htm, (accessed on 9 March 2011).

⁶⁷ . International Foundation for Electoral Systems, '*the Right to Vote for People with Disabilities*,' training manual, 2005. At, p. 55, available: <http://www.ifes.org>, (accessed on 25th of December 2010).

⁶⁸ . *Ibid* at p. 26.

with visual impairments need to have access to one of the voting methods.⁶⁹ For this task, trained, informed and appropriately acting election officials need to be placed in the polling stations.

The same critical analysis has to be done on how to arrange utilizable voting centers and equal voting conditions for citizens with physical impairments. In order to create conducive voting environment for these people, greater efforts are required to minimize inaccessible voting locations, transportation difficulties, architectural barriers and unnecessary conditions of having to wait in long lines in order to vote.⁷⁰

Reasonable accommodations⁷¹ are similarly expected so as to make the right to vote as a practicable right for persons with mental and psycho- social disabilities. Accordingly, providing easy-to-read electioneering materials, awareness raising publications, programs of competitive parties and their policies as well as formats of ballot papers has to be prepared in the way that could be understood by these people. Posting pictures of the candidates on the ballot papers, allowing personal supports in to the voting booth, arranging curb side voting and related assistances also might contribute a lot for these persons in the practical enjoyment of their right to vote.⁷² The fate of persons with hearing impairments in the exercising of their right to vote also needs special attention. Measures dictated by sign languages and related techniques can help these people in their aspirations for enjoying this right as equal as other citizens.

Generally, it has to be noted that, a mere recognition and constitutional declaration of the right to vote in itself may not ensure the practical enjoyment of this right by PWDs in the absence of each accommodative and positive measures. A country can hardly call itself a democracy without ensuring the exercise of this right by its citizens with disabilities who are integral parts of the community at large.⁷³

⁶⁹ See *Supra note*, no.49 p.17.

⁷⁰ . *Supra note*, no. 67, p.56.

⁷¹ See more on accommodative measures; Ruth Colker, *The Law of Disability Discrimination: Cases and Materials*, Cincinnati Anderson Publishing Co. 1995, at p. 164.

⁷² . Sandor Gurbai; *Participation of People with Disabilities in Political and Public Life*, Mental Disability Advocacy Center (MDAC), November 2010, at p. 19, available at <http://www.mdac.org>, (accessed on the 7th of December 2010).

⁷³ Kay Schriener, '*Making Exceptions to Universal Suffrage: Disability and the Right to Vote*' University of Arkansas, London, 2000.

Finally, it would be of important to finish this agenda by the wording of Thomas H. Earle who had to say this: “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which as good citizens we must live. Other rights even the most basic are illusory if the right to vote is undermined!”⁷⁴ Therefore, effective exercising of the right to vote could serve for PWDs as a basic tool of empowering a person who is contesting for power with more disability protective policies and programs and who will be diligent and devoted to elevate the rights of these people one step forward in all affairs of their lives.

3.3.2. The Right to be Elected and PWDs

The right to stand for election is another traditional form of political participation. Like what has been said on the right to vote, here also, a mere constitutional or legislative declaration and recognition of this right to “every citizen” does not entail that PWDs are guaranteed the same plain to compete for a seat at the legislature or to hold office in the executive.

For this right to become an expendable and practically enjoyable right for PWDs, it needs to have both long term and urgent accommodative measures which include conscious and creative individual and collective efforts as well as programs aimed at assessing and minimizing of those barriers that would otherwise impede their activeness in this political spectrum.⁷⁵ To this end, regular and consistent disability sensitization programs should be disseminated to the community and its leadership as a first step.⁷⁶ This can increase societal awareness and minimize the public ignorance and mistrust of PWDs which is one of the fundamental barriers in the move towards the empowerment of these people. This effort requires long term commitments through legislative, administrative and policy programs including advocacy and civic and human rights literacy educational strategies.⁷⁷

The other long term accommodative measure is an effort towards the building and enhancing of the self esteem and confidence of these people. This can be made by developing their

⁷⁴ Thomas H.Earle and Kristi M. Bushner, ‘*Effective Participation or Exclusion: the Voting Rights of People with Disabilities*’, article, 11 temp. pol. & civ. Rts.L. Review (2001-2002), pp. 327-372.

⁷⁵ Focus on Elections and Disability, Extending the Franchise to Citizens with Disabilities, Concept Paper, available at, [www.electionaccess.org/rs/Discussion paper.htm](http://www.electionaccess.org/rs/Discussion%20paper.htm), (accessed on the 7th of December, 2010).

⁷⁶ *Ibid* at p.9.

⁷⁷ . see Phitalis, *supra* note, no. 57.p. 3.

communication skills, publicly speaking opportunities, bargaining and negotiating experiences which are indispensable qualities required in the political arena in general and to hold a legislative or executive seat in particular.⁷⁸ For this task, educational facilities and training opportunities as well as experiential exposures should be available for these people.

Moreover, it is clear that politics and the battle for office is an expensive game. In order to have success in the political and electoral campaign, money and different materials are essential ingredients to introduce the policies and programs and to conduct other logistical and administrative tasks. If PWDs are economically and financially settled in a better position, they can forward their own political aspirations without the influence of others. Accordingly, improving and widening opportunities and choices for their economic independence is also an essential step. Otherwise extremely poor PWDs will not have the free and authoritative engagement in this battle on empty stomachs.⁷⁹ This is what is happening as a major challenge in our country.

On the other hand, there are also measures that require urgent reaction with a lesser cost. In this regard, avoiding of legal barriers and legislative prohibitions against PWDs for holding public office should be of the first step. Advocacies and lobbying for the enactment of affirmative legislations which allows mechanisms like quotas is required.⁸⁰ We have also other mechanisms like financial and/or material support to candidates with disabilities to run an election. PWDs focused reforms within individual political parties, organized efforts of the media, and the National Election Board special protections are also basic enhancement mechanisms and can increase their aspiration for deeper and enhanced political desire to contest for election.⁸¹

3.3.3. Access to Political Party Membership for PWDs

Strong and suitable democracy is dependent on the existence of well- functioning political parties. These organs are crucial actors in bringing together diverse interests, recruiting and presenting candidates and developing competing policy programs that provide people with choices.⁸² Political parties are the vehicle through which popular sovereignty is expressed and

⁷⁸ *Ibid* at p. 7.

⁷⁹ . See Thomas H. Earle et; al, *supra note*, no.72, P.356.

⁸⁰ . This is the most interesting experience practiced in African Countries like Uganda and South Africa.

⁸¹ . See *supra note* no. 62, p.7.

⁸² . Michael Chege, *Political Parties in East Africa; Diversity in political party systems*, IDEA, 2007, p. 7.

transformed in to public policy and action.⁸³ Political parties are means through which citizens can participate in governance either directly or through elected representatives of their choice.⁸⁴ To this end, vibrant membership is the entry that drives any party be it elite or mass or oligarch.⁸⁵ Therefore, ensuring the active participation of PWDs as one sections of the society and as targets of the parties will be of an essential step forward towards the inclusion of these people in the political affairs of their country.

In the views of Verba, Schlozman and Brady, factors affecting political participation can be seen from three perspectives; these are resource, psychology and recruitment.⁸⁶ The first factor responds to the question of “are you able to participate? And the 2nd factor requires an affirmative answers to the interrogation of “do you want to participate?” and the last factor reacts on the equation of “did any one ask you to participate?”

The resource aspect includes time, money and civic skills that are very essential ingredients of success in the political life. The psychological factor is meant to imply political interest, civic values, and feelings of efficacy, group consciousness and commitment to specific policies. Finally, the political recruitment which is to be done through formal and informal networks implies an access to a certain group with the same political affiliation and with a common strategies and programs through which active involvement in the political battle is to take place.⁸⁷

Now let us bring all these factors into the specific agendas concerning the political life of PWDs. It is the view of the author that, access to the different political parties as a member enables PWDS to challenge most of the above factors that may affect their political participation. It is apparently difficult for an individual with disability to afford the cost of this game, to get acceptance and support the community only by his/her own personal policies and programs. Secondly, even though the person may not be nominated as a candidate representing the party to

⁸³ *Ibid* at p. 9.

⁸⁴ The African Commission on Human and Peoples’ Rights, the case between *Lawyers for Human Rights vs. Swaziland* (2005) AHRLR 66 (ACHRP 2005), Communication 251/2002, paragraph 63.

⁸⁵ *Supra* note 83 at p. 47.

⁸⁶ . Verba Sidney et; al, “*Voice and Equality; Civic Voluntarism in American Life.*” Cambridge, MA; Harvard University Press, 1995, p.35.

⁸⁷ . *Ibid* p. 37.

which he/she belongs, at least he/she can make disability specific concerns as a principal agendas of the party's dialogues in different policy debates. Accordingly, the author believes that there has to be access for these people to join their hands with others having similar political thinking.

Therefore, political parties have to make PWDs' focused structural reforms within their systems and they have to open their doors to attract and consume the skills, experience and knowledge of these people. Any normative or administrative discrimination in the internal activities of the party should be nullified. Criteria to stand for election representing that party should not be discriminatory specially based on disability. Instead, incentives and encouraging facilities should be designed.

However, as it is briefed by the Human Rights Committee, party membership should not be a condition of eligibility nor a ground of disqualification from exercising their electoral right either by voting or by standing for election.⁸⁸ The author advocates this strategy not because it is a qualification to exercise the right to stand for election but on a strong belief that joining to a political party can ease the difficulties and practical challenges of PWDs while exercising this fundamental right.

3.4. The Participation Spectrum; Total Exclusion, Limited or Full Participation?

Evaluating and critical analysis of the participation of PWDs in the political spectrum can serve as an introductive guideline for the future possible reformations that may have their own impact in determining the political status of these people in the community to which they belong. Scrutinizing the extent of their participation could entail and indicate the fact of how the conceptually framed political rights which are addressed in the previous topics are getting a practical meaning on the ground. According to the European Union Agency for Fundamental Rights (FRA), the status of PWDs and their participation in politics can be reflected in either of the three situations; total exclusion, limited participation or full participation.⁸⁹

⁸⁸ . See HRC *supra* note, no. 63 paragraph 10.

⁸⁹ . Mario Oetheimer, *the Right to Political Participation of Persons with Intellectual Disabilities and with Mental Health Problems in the European Union*. FRA, October 2010. Pp. 7-28.

The total exclusion indicates the fact that all PWDS especially those with intellectual and mental health problems are automatically prohibited either by the constitutional or legislative provisions. In this situation, PWDS are no more actors in the political field. In fact, as a result of developments in the international human rights protection in the area of disability and the corresponding attitudinal changes, the laws that condemn the total participation of PWDs are getting reframed.

The limited participation spectrum is manifested in different approaches.⁹⁰ Some limitations are imposed based on the type of disability and most of the time it is persons with mental and intellectual disabilities who are subject to such restrictions. On the other hand, there are restrictions taking in to account the content of the right to political participation. This may be reflected in cases where PWDs are permitted to vote but not to stand for election or to hold office. Still in other occasions, even though there is no constitutional or legislative restriction at all, PWDs may not have a practical exposure and facilities enabling them to exercise their right. In these occasions, their rights could be limited only by external barriers and impediments. This usually happens in countries where there are no affirmative and accommodative legislative and technical measures that enable these people to exercise their right.

The last and the uncommon to happen is the full participation of PWDs in all aspects of the political spectrum. At this level, there are no legislative or practical constraints against the exercising of all political and electoral rights by PWDs. Very few countries mainly Austria, Finland, The Netherlands and Spain are getting closer to this stage.⁹¹

Having these practical indicatives in mind, the author gives concentration to the analysis of the legal instruments of Ethiopia, and the scope of protection given to PWDs to enjoy their political right in the last part of the fourth chapter and in the whole contents of chapter five. Critical survey of the practical realities is conducted with a view to indicate the status of these people in the country's politics.

⁹⁰ . *Ibid* at p. 23.

⁹¹ . *Ibid* at p.24.

3.5. Conclusion

In this chapter, attempt has been made to show the dynamic nature of the notion of politics and political participation and what these mean for PWDs. Without denying the fact that political participation can be demonstrated in different forms and at different levels, much emphasis is given by the author to the right to vote, the right to stand for election and access to party membership. This is made intentionally believing that these forms of participation are the commonly known processes in the democratic society as it is hard for a country to call itself as a democracy without full and effective protection of these rights for every citizen including PWDs.

Most importantly, the author wants to stress that a mere constitutional or legislative declaration of these rights “to every citizen” in itself does not guarantee these people for the exercise of their rights in reality in the absence of accommodative measures of constituting legislative, financial, technical or administrative type. These measures should be employed taking in to account the special needs and particular concerns of each person with disability since the barriers and impediments depend on the type of disability.

Even though there are different legitimate grounds to restrict or suspend the electoral rights of citizens, by no means should the status of disability be criteria for disqualification. Accordingly, any discriminatory laws which restrict the rights of PWDs have to be reconsidered and should be updated in conformity with the emerging human rights standards for the protection of the rights of these people.

On the other hand, though being a member to a political party may not be the only means of actively involving in the game of politics, the author strongly argued that party membership is an indispensable strategy of challenging the attitudinal, financial, physical and administrative barriers which are becoming bottle necks to PWDs in the practical realization of their political and electoral aspirations. However, this strategy will be meaningful only if there are reforms and attractive facilities in the organizational setup of the different political parties.

Together with the necessity of all legislative and practical accommodative measures and disability friendly reforms, still the interest, aspiration and passionate commitment of PWDs themselves is a pillar in the absence of which nothing will be meaningful. These facts along with

other external legal and practical constraints are the determinant factors that could indicate the full or limited participation or the total exclusion of PWDs in the political arena.

Finally, what can be summarized is the fact that society needs to reflect the diversity of its citizens and benefit from their varied experience and knowledge. It is therefore important that PWDs can exercise their rights to vote, to be elected and actively involved in political parties so that they can contribute a lot to their country and to the community to which they belong. At the same time, they will be beneficiaries of all the assets and opportunities that the society has in common. It is also important to note that, the entire legal frame works that give recognition to these rights should be interpreted and implemented with their scope of incorporating the contents specific to PWDs.

Chapter Four

International, Regional and National Legal Frameworks vis-à-vis Electoral Rights of Persons with Disabilities

4.1 Introduction

There seems to be a general misunderstanding that most of the United Nation (UN) and African Human Rights instruments did not address the rights of PWDs. This allegation is mainly justified by the fact that most of the documents did not use the term “disability” as one ground in provisions like those which prohibit discrimination.⁹² However, this seems a narrow interpretation of the instruments which were intended to have a general applicability to all human beings. One can extract this understanding from the Universal Declaration of Human Rights (UDHR) which unequivocally contemplated that “all human beings are born free and equal in dignity and rights”.⁹³

Accordingly, the whole contents that will be reflected in this chapter are based on a strong perception that ‘whatever rights recognized in these instruments are equally applicable to all human beings with no exception to PWDs. Most importantly, the majority of international human rights instruments protect the rights of PWDs through the golden principles of “equality” and “non- discrimination” which are the pillars in the “status quo” of every human being in the enjoyment of the rights prescribed in these instruments. On this regard, the Vienna Declaration and Program of Action take cognizance of this fact and stressed that: “Special attention needs to be paid to ensure non- discrimination and equal enjoyment of all human rights and fundamental freedoms by disabled persons including their active participation in all aspects of society!”⁹⁴

⁹² In fact there are instruments in the UN system that expressly incorporate disability rights as it can be seen as an example from article 25(1) of the UDHR and article 23 of the CRC.

⁹³ See article 1 of UDHR, adopted 10 Dec. 1948.

⁹⁴ See the Vienna Declaration and Program of Action, 1993, paragraphs 63 and 64.

This notion of the general applicability of human rights norms to the concerns of PWDs has been repeatedly announced by most of UN documents in the field of disability.⁹⁵ The most recent and the first binding international Convention on the Rights of Persons with Disabilities (CRPD), unequivocally underscores the general applicability of all human rights to PWDs by stressing that “the UN Charter, the UDHR and other UN human rights instruments, as if they are the corner stone’s for the best realization of the objectives stated in the Convention.”⁹⁶

The same perception holds true while analyzing the Regional as well as the National legal instruments which recognize electoral rights as a fundamental manifestations of political participation. With this objective, attempt is made on how to contextualize these documents into a disability friendly version through which the electoral rights of PWDs can be maintained.

4.2. International (UN) Human Rights Instruments and Electoral Participation of PWDs.

4.2.1 UDHR as a Soft Law

The UDHR has served for the last 60 years as a basic human right instrument exerting a moral and political influence on states though not a legally binding document. Even today, many understand the instrument as the constitution of the entire human rights movement and more specifically numbers of its provisions to have gained the status of becoming customary international law.⁹⁷ Accordingly, being an antecedent for the existing international, regional or national human rights norms, the UDHR and its substantive norms are of a great important while invoking the various issues concerning PWDs out of which the issue of inclusion and equal participation in the political environment of the country is the core agenda.

⁹⁵ For example, we have the 1975 UN Declaration on Disability which assumed the general applicability of all the human rights norms for PWDs. The same approach is taken by the World Program of Action. The Standard rules on the Equalization of Opportunities for Persons with Disabilities (StRE) also hold the same stand by giving emphasis to the idea of the full enjoyment of all the human rights by all human beings including PWDs.

⁹⁶ See the preamble of CRPD, paragraphs A-D.

⁹⁷ C. Heyns and M. Killander, *International Human Rights Law in Global Context*; FG Isa and K’de Feyter(eds) *the African Regional Human Rights System* , 2009, 855.

The value of the document begins from its preamble. The paragraphs are full of words and phrases like “the recognition of the inherent dignity, equal and inalienable rights of all members of the human family, reaffirming the faith in fundamental human rights ...”⁹⁸

Coming to the details of its provisions, the document is full of provisions that are vital to inspire the better enjoyment of the political and electoral rights by PWDs. To this end, provisions prohibiting discrimination on any ground including of disability⁹⁹, the right to recognition as a person¹⁰⁰, freedom of thought, freedom of opinion and expression,¹⁰¹ freedom of peaceful assembly¹⁰² and association¹⁰³ are very crucial for assuring the better political life of people with disabilities in general and their successful electoral engagement in particular.

Having a direct relevance to the issue at hand, article 21 of the UDHR is critical and life sustaining provision. It encompasses the rights of the individual to take part in the political and public life from three different but interdependent contents of the right:

- The right to take part in the conduct of public affairs directly or through freely chosen representatives.
- The right to vote and to be elected at genuine periodic elections which shall be made by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.
- The right to have access on terms of equality, to public services in his /her country.

Generally, it can be argued that the UDHR as an international human right instrument, it could serve as an essential guidance in advocating the political and electoral rights of PWDs at least from three perspectives: On one hand, as a founding ancestor of dozens of human rights instruments having direct or indirect values to invoke the different rights involving the needs of PWDs, it can be cited as a historical justification. On the other hand, it could serve as a lobbying instrument to exert a moral and political influence on states to work on the better implementation of the political participation of people with disabilities. In addition to this, as a human right norm

⁹⁸ See UDHR paragraphs 1, 2, 5 and 6.

⁹⁹ *Ibid* at article 2.

¹⁰⁰ *Ibid* at article 6.

¹⁰¹ Article 18.

¹⁰² Article 19.

¹⁰³ Article 20.

constituting the status of international customary law (arguably), its substantive provisions will be of great inputs in the move towards the quest for the feasibility of the electoral participation of these people

4.2.2 ICCPR: A Binding Normative Foundational Instrument for the Political and Electoral Freedoms.

This document¹⁰⁴ provides protection for a range of civil and political rights. The primary objective of the document is sustaining the freedom of the individual and ensuring that he/she is entitled to exert influence over the political life of his/her country.¹⁰⁵ The value of the Covenant in relation with the political life and electoral participation of PWDs can be seen from different perspectives: first of all, the document constitutes one of the international bills of human rights along with the UDHR and ICESCR instruments. Moreover, the Covenant is universal on the fact that it covers the issues that concern all human beings unlike other instruments like the CEDAW which pertains only to women.¹⁰⁶ On top of these, the document based itself on the notion of “the inherent dignity and the equal and inalienable rights of all members of the human family as a foundation of freedom, justice and peace in the world.”¹⁰⁷

In addition to these realities, articles 2 and 26 of the Covenant which guarantees the non-discrimination clause are essential on the fact that the two provisions are simply illustrative and not exhaustive.¹⁰⁸ Accordingly, the notions of equality and non-discrimination clauses in the document are essential guidelines to fight the marginalization and invisibility of PWDs in the political spectrum of their country. Therefore, the covenant if best interpreted and implemented having in mind of these people; it is a guarantee for their existence as a human being. It can be

¹⁰⁴ International Covenant on Civil and Political Rights (ICCPR), Adopted by General Assembly Resolution A/RES/2200A (XXI), of 16 December 1966, Entered in to force: 23 March 1976 in accordance with article 49.

¹⁰⁵ Gerard Quinn, *supra* note no.36, p. 52.

¹⁰⁶ *Ibid* at p. 54.

¹⁰⁷ See the preamble of the ICCPR, paragraphs 1-3.

¹⁰⁸ This analogy can be asserted from the term “other status” which is a clear indication of the fact that discrimination is prohibited not only on the grounds expressly mentioned but also on other conditions which may go against the values and the general objectives of the covenant itself. No doubt that, discrimination based on disability is a violation of the foundational principles of the covenant.

an assurance for their associational and liberty rights which are both a means and end results of their effective political participation.¹⁰⁹

Coming to the specific provisions of the covenant which are directly or indirectly relevant in the political life in general and the specific electoral participation of PWDs, the instrument has incorporated the most essential rights. We can mention rights like freedom of thought,¹¹⁰ freedom of opinion,¹¹¹ the right to peaceful assembly,¹¹² the right to take part in the conduct of public affairs,¹¹³ equality rights¹¹⁴ and the right to association¹¹⁵ as major instrumental rights for the better exercising of political and electoral participation.

Despite the reality that these rights are pillars for assuring the better engagement of these people in the political environment of their community, practically speaking, the rights are commonly reduced to a narrowest enjoyment of the rights or, even in majority of the occasions, these people are totally excluded from exercising these rights either by law or due to the practical inconveniencies.¹¹⁶ Just to highlight a couple of examples, the right to association for PWDs is not genuinely interpreted to include their right of joining a political party of their preference. Freedom of thought and opinion are commonly reduced only to freedom of religion failing to accept the reality of these people as political citizens.¹¹⁷

Article 19 clearly states the right to freedom of expression which includes freedom to seek, to receive and impart information. Yet still some PWDs such as deaf and blind persons often deprived of this opportunity because of communication and environmental barriers.

Articles 21 and 25 also recognized essential rights for the better political life of people with disabilities. These include the right to assembly and the right to take part in public affairs which are the traditional manifestations of political participation in a democratic society. However still these people are not effectively exercising such rights basically on issues of access to places where the political life is played out.

¹⁰⁹ See Gerard Quinn, *supra note* no.105 p. 63.

¹¹⁰ See ICCPR article 18.

¹¹¹ Article 19.

¹¹² Article 21.

¹¹³ Article 25.

¹¹⁴ Articles 2, 3 and 26.

¹¹⁵ Article 22.

¹¹⁶ See, *supra note* no.109 p.68.

¹¹⁷ *Ibid* at p.69.

At the same time, the right to vote which is unequivocally enshrined under article 25 is a classic democratic manifestation of political activeness. In fact, this right is usually far from the reach of PWDs due to various physical, communicative, technological, attitudinal and environmental impediments.¹¹⁸ On the other hand, the representation of PWDs in political parties, parliaments and other bodies is another form of effective political participation.

The golden and the most fundamental human rights norm; the right to equality could best ensure the better implementation of all the above mentioned rights in the political life of these people. Articles 2, 3 and 26 of the ICCPR are important on this aspect.¹¹⁹ Accordingly, based on the notion of equality and the principle of non-discrimination, every citizen including PWDs is entitled to “have access to public services in his/her country”.

To this end, for better understanding of the right to equality, the United Nations Standard Rules on the Equalization of Opportunities for PWDs (StRE) approached the term stating that: “the principle of equal rights implies that the needs of each and every individual are of equal importance and those needs must be made on the basis for the planning of societies and that all resources must be employed in such a way to ensure that every individual has equal opportunity for participation. PWDs are members of the society and have right to remain within their local communities ...”¹²⁰

4.2.3 CEDAW and Electoral Participation of Women with Disabilities

Like that of the previous instruments, in the CEDAW¹²¹ also women with disabilities are mentioned in neither of its provisions. But it is apparent that, the term “women” includes both those with and without disabilities. Hence, this convention is important to advance the furtherance of the political role of women with disabilities mainly from two perspectives.¹²² First, it is essential to interpret the more general rights protected by the more widely applied

¹¹⁸ Theresa Dagner posed an interesting question stating that “if polling stations are inaccessible to wheelchair users or if the election material is available in print version only, how can an election be considered to be held by universal and equal suffrage and ... by secret ballot guarantying the free expression of? See *ibid* at p. 73.

¹¹⁹ In fact, none of the three provisions mentioned “disability” as a prohibited ground of discrimination. However, it is apparent that the term can be covered by the open ended phrase “based on other status”.

¹²⁰ See StRE, paragraphs 25 and 26.

¹²¹ Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Adopted by General Assembly Resolution A/RES/34/180: Entered in to force 3 September 1981 in accordance with article 27.

¹²² See *supra note*, no. 116, p. 175.

instruments like the ICCPR, and make them fit for a specific purpose of women in general and women with disabilities in particular. Secondly, the convention is of a vital instrument to fight the double discrimination and vulnerability of women with disabilities i.e., discrimination based on gender and disability. Accordingly it increases the visibility of women with disabilities in the human rights system by maintaining the *de facto* equality and eliminating the causes of discriminations. Looking at the detailed provisions of the instrument, rights in relation to non-discrimination,¹²³ equality,¹²⁴ guaranteeing full enjoyment of all human rights by tackling stereotypes and prejudice¹²⁵ are sensitive provisions that can serve as an instrumental leeway of facilitating the smoothest political life of women with disabilities.

Article 7 of this Convention is the most relevant provision declaring the participation of women in public and political life not only at the national level but also in the international arena.¹²⁶ This article unequivocally imposes an obligation on states to take all measures of eliminating discrimination against women in the political and public life of their country. Women are entitled the rights to vote in elections and public referenda, to be eligible for electoral competition and to hold office. They need to have equal access to participate in the formulation of government policy and perform all public functions at all levels of government. Their participation in political parties and organizations concerned with the general public and political affairs of the country is duly recognized.

Coming to the specific needs of women with disabilities, it is apparent that they will be victims of the general discriminatory approaches to gender. Besides this vulnerability, these people will suffer a lot as a consequence of exclusions on the ground of their disability. Hence, ensuring their active involvement in the political and public affairs of their community can create opportunities for these people to fight the disfranchisements in all affairs of their needs. Accordingly, the author strongly believes that accelerating the participation of women with disabilities in the political affairs of their country is not a mere alternative but a fundamental strategy to fight their multidirectional challenges.

¹²³ See articles 1 and 2(e), CEDAW Convention.

¹²⁴ *Ibid* at article 3.

¹²⁵ Articles 4-6.

¹²⁶ The same content is provided under article 8.

4.2.4 ICERD and the Electoral Rights of PWDs

In different occasions, the relevance of International Convention on the Elimination of Racial Discrimination¹²⁷ (ICERD) has been invoked in the context of race oriented disability problems.¹²⁸ Hence, the convention is important not only to challenge social discrimination but also address the damage caused by racism and racial oriented tyrannies one of which may be disability.

According to the argument proposed by Dr. Joshua Castellino,¹²⁹ there are two basic ways in which the convention may extend protection to PWDs. First of all, combating discrimination based on race being the fundamental purpose of the convention, it is relevant to protect these people from double discrimination; i.e., discrimination based on race and disability. On the other hand, as it is clear in the preamble, the convention's primary goal is to create space for difference and to challenge attitudes and practices that use difference as a ground for exclusion and discrimination. Accordingly, it seems logical to include disability as one prohibited ground for discrimination side by side to those directly known grounds of discrimination like ethnicity and language. These logical arguments are the cornerstones in contextualizing the Convention to have a value of maintaining the political and electoral rights of PWDs.

Coming to the specific provisions of the ICERD Convention which are directly relevant for the issue at hand, articles 2 and 5 of the document are pillars in advocating the right to political and electoral participation. Accordingly, discrimination of any type is prohibited. To this end, ensuring the political and electoral participation of all groups in the country including PWDs is the exact way forwarded for peaceful coexistence of various groups together with their differences. That is why the convention clearly invokes the enjoyment of political rights in particular the right to participate in elections on the basis of equal suffrage.¹³⁰ The right to freedom of thought, consciousness and religion,¹³¹ the right to freedom of opinion and

¹²⁷ International Convention on the Elimination of all forms of Racial Discrimination (ICERD), Adopted by General Assembly Resolution A/RES/2106 (XX) of 21 December 1965, Entered in to force: 4 January 1969 in accordance with article 19.

¹²⁸ S. Hall, "New Ethnicities", *Race, Culture and Difference*, J. Donald and A. Rattansi (eds.), Sage Publications, 1992, p.254.

¹²⁹ See Gerard Quinn, *supra note*, no. 117 p. 240.

¹³⁰ See article 5(c), ICERD Convention.

¹³¹ Article 5(d) (vii).

expression,¹³² and the right to freedom of peaceful assembly and association including the right to nationality¹³³ are meaningfully recognized. These provisions are helpful for PWDs in their effective political participation especially in elections.

4.2.5 The CRPD: The First Internationally Binding Instrument Exclusive to the Human Rights of PWDs.

4.2.5.1 The General esteems of the Convention

It must be clear that, this Convention¹³⁴ is not the first instrument that deals with disability. On top of this, there is no new right in this document other than those already recognized in the earlier international instruments.¹³⁵ What is new in the Convention that marked the beginning of a new era in the efforts of realizing the full and equal enjoyment of human rights to PWDs is mainly on the reason of the following facts:

- It is the first binding document on the rights of PWDs which recognize their inherent dignity in comprehensive and detailed arrangements.
- It is the great reflection of the emerging social and human rights approach to disability.
- It has made explicit directions and obligations to state parties to enforce the previously ratified international instruments in the way of making them sensitive to PWDs.
- It recognized the full spectrum of civil, cultural, political, economic and social rights as if they are equally and inclusively applicable to the benefits of PWDs.¹³⁶

Accordingly, the main purpose of the convention is promoting, protecting and ensuring of full and equal enjoyment of all human rights and fundamental freedoms by all PWDs. It gives much emphasis for the respect of the inherent dignity of these people.¹³⁷ It further recognizes that disability represents human diversity and it is an evolving concept¹³⁸ Disability is approached as

¹³² Article 5(d) (viii).

¹³³ Articles 5(d) (ix) and (iii).

¹³⁴ United Nation Convention on the Rights of Persons with Disabilities (CRPD), adopted by General Assembly Resolution A/RES/61/106 of 13 December 2006.

¹³⁵ Marianne Schulze, *supra note* no.14, P. 19.

¹³⁶ Report of the UN High Commissioner for Human Rights on Progresses in the Implementation of the Recommendations Contained in the Study on the Human Rights of Persons with Disability, A/HRC/14/75.para.19

¹³⁷ See articles 12 and 17, CRPD Convention.

¹³⁸ This is the fundamental principle of the convention as clearly indicated under article 3(d).

phenomena which results from the interaction between PWDs and the attitudinal and environmental barriers that are hindering their full and effective participation in society on equal basis with others¹³⁹

4.2.5.2. Specific Provisions Relevant to the Political and Electoral participation of PWDs

It is pretty clear that the Convention reaffirmed the universality, interdependence, indivisibility and interrelatedness of all human rights.¹⁴⁰ Without denying this fact, just for the sake of the issue targeted in this paper, provisions dealing with the human rights of PWDs in their political and electoral engagement are specifically addressed. Apart from the general guidelines stipulated in the preamble part of the Convention,¹⁴¹ it contains general principles as founding aspirations of the document.¹⁴² Out of these principles, the notions of equality and non -discrimination,¹⁴³ the issue of accessibility,¹⁴⁴ Freedom of expression and opinion and access to information¹⁴⁵ and equal recognition before the law¹⁴⁶ can be seen as a vital instrumental rights of ensuring the full and effective participation of PWDs in the political environment mainly in the electoral game.

Besides, we have article 29 that recognize the right to participation in political and public life. This provision is articulated in detailed and comprehensive way declaring that:

States parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and to be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

¹³⁹ See the CRPD, preamble at paragraph “e”.

¹⁴⁰ See Paragraph “c”.

¹⁴¹ See paragraphs like “f, m, n, o and v”.

¹⁴² Article 3.

¹⁴³ Article 5.

¹⁴⁴ Article 9.

¹⁴⁵ Article 21.

¹⁴⁶ Article 12.

- (ii) *Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions to all levels of government, facilitating the use assistive and new technologies where appropriate;*
- (iii) *Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;*
- (b) *Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:*
 - (i) *Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;*
 - (ii) *Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.*

In fact, there seems somehow a lesser word power in the expression of the right in this Convention when compared with the earlier documents. For example, phrases like “universal suffrage” and “genuine periodical elections” that are expressions used under article 5(c) of CERD and art 25(b) of ICCPR respectively are not included in this convention.¹⁴⁷ However, as it has been already said, this Convention is not absolute self executing document and it welcomes the broader and more protective concepts in other instruments. Whatever the wordings of the instrument may be, the Convention contextualizes the right to political and electoral participation in to a disability friendly format.

Accordingly, article 29 addresses participation in elections either by voting or by contesting for elections with assistance by a person of their choice and by assistive technologies which may

¹⁴⁷ See Marianne Schulze, *supra* note no. 135 at p. 109.

minimize the fear of manipulations and distrusts.¹⁴⁸ What should be noted is that, the Convention is innovative in the sense that it qualifies participation as “ Fully and effectively” for the first time in the core human rights document which is designed to assure the accessibility of election proceedings and election campaigns.¹⁴⁹

Generally, the contents of the provision being non-exhaustive¹⁵⁰ can be summarized as the right to:-

- Vote in elections on a non- discriminatory basis.
- Stand for elections as a candidate for public office.
- Access to effective, impartial and non- discriminatory procedure in the registration for voting.
- Have equal and effective access to voting procedures and facilities.
- Cast their ballot in secret.
- Have if needed, assistant to vote; in this case these people should have the right to be assisted by a person of their own choice.
- Ensure that political parties and public authorities provide accessible information to voters.
- Participate in the conduct of public administration, including the administration of political parties and civil society.
- Participate in the work of international organizations, including serving as a representative of government in international organizations and
- Form and join associations of their own at all levels.¹⁵¹

Generally, as per article 29 of the CRPD, states parties are required to ensure and provide by means of positive governmental action that, citizens with disabilities actually have the opportunity to exercise their political rights. States are expected to do further more than simply

¹⁴⁸ *Ibid* at p.110.

¹⁴⁹ This qualification is reinforced by the fundamental principle of “full and effective participation and inclusive in society which is stipulated under article 3(c) and by the general obligation to “closely consult with and actively involve PWDs in all aspects of decision making provided for in article 4(3).

¹⁵⁰ See CRPD, article 29(a).

¹⁵¹ Note that it is the first seven elements of political participation that this paper is intended to address.

proclaiming of “equality” in political participation by providing reasonable accommodative measures depending on the type of disability that the person is living with.¹⁵²

4.3. The African Regional Human Rights System and Electoral Rights of PWDs

For a longer period of time, the African States have been egregious human rights violators and skepticism about their ability to create an effective regional human rights system has prevailed.¹⁵³ However, whatever the infancy of the system may be relatively compared with other regional human rights systems; the continent has shown considerable improvements in the last 30 years mainly in adopting variety of human rights norms though there seems still an ineffectual enforcement system. In these moves, it was the African Charter on Human and People’s Rights (here in after ACHPR) that served as an eyes breaker to the previous silence to the human rights corpus.¹⁵⁴ The charter was innovative mainly on the fact it is comprehensive composition of the three “generations” of rights, incorporating the concept of people’s rights and the imposition of duties on individuals.¹⁵⁵

Recent changes in the African states are mainly characterized by demands for more open political society which are forecasting the need for the protections of civil and political rights.¹⁵⁶ This is mainly supplemented by emergent democracies in some parts of the continent. Accordingly, the African community through the umbrella of OAU/AU came up with certain normative standards the objective of which is mainly to safeguard the political freedoms and participatory rights for the African people in all aspects of their country.

Unlike other regional systems,¹⁵⁷ there is no disability specific instrument and specialized monitoring body in the African system. Therefore, at the moment the only option at hand is

¹⁵² efc, *Study on Challenges and Good Practices in the Implementation of UN Convention on the Rights of Persons with Disabilities*, Final Report, Brussels 2010, at p. 117.

¹⁵³ Makua Mutua, *the African Human Rights System, a Critical Evaluation*, article, available at <http://hdr.undp.org/en/reports/global/hdr2000/papers/MUTUA.pdf>, (accessed 3 February 2011).

¹⁵⁴ The African Charter on Human and Peoples’ Rights was adopted in 1981 by the 18th assembly of Heads of State and Government of OAU, and came in to force in 1986. The document is also known as the Banjul Charter due to the fact that its final draft was produced in Banjul, the capital city of Gambia.

¹⁵⁵ . Makua Mutua, supra note no.153, p.3.

¹⁵⁶ France Viljoen, *International Human Rights Law in Africa*, 3rd edition, 2007, p 17.

¹⁵⁷ For example the Organization for American States have a disability specific Convention which is named as “Convention on Elimination of All Forms of Discrimination against PWDs”.

contextualizing the existing norms in to disability friendly version. Accordingly, this part of the paper tries to scrutinize some of the African Human Rights instruments from the perspective of their values in pleading for political and electoral inclusiveness of PWDs to have a say in the political architect of their country. With this objective, the directly relevant instruments of the Banjul Charter, the African Democracy Charter, the Women Protocol and Declarations of Principles on Freedom of Expression are purposefully selected to be addressed in this part.

4.3.1 The African Charter on Human and Peoples' Rights

This document¹⁵⁸ was a historical response to various inconveniences in the human rights discourse in the continent. Apartheid in South Africa, the straggle for a new international economic order, dictatorship and authoritarian system of governments in most countries of the continent were few among others.¹⁵⁹ Accordingly, the Charter played its greatest contribution in diverting the attention of the former Organization of African Unity (OAU)¹⁶⁰ which was concerned more with African self governance than the situation of Human Rights in the continent.

The values of the Charter in the promotion and effective implementation of the political rights of PWDs can be acknowledged from different angles. First, the preamble of the Charter espouses freedom, equality, justice and dignity to which these people are highly in need of.¹⁶¹ Secondly, the Charter unequivocally compels the need to root out all forms of discrimination based on non exhaustive lists of grounds like race, color, sex, language, religion or political opinion. Though disability is not expressly mentioned, on the same grounds already addressed in the previous instruments, the non- discrimination provision of the Charter¹⁶² could serve as an essential tool to fight discriminations in the political tournaments on the ground of disability. Non- discrimination on the basis of disability could be read inter alia to the category of “other status” and based on the wording of the article which prohibits discrimination of “any kind”.

¹⁵⁸ African Charter on Human and Peoples' Rights (ACHPR), Adopted 27 June 1981, Nairobi, Entered in to force: 21 October 1986 in accordance with article 63.

¹⁵⁹ E. Kodjo, *The African Charter on Human and Peoples' Rights*, 1990. P. 11.

¹⁶⁰ The OAU was substituted by the existing African Union (AU) after the adoption of the Constitutive Act of the African Union in the year 2000.

¹⁶¹ See ACHPR, the preamble, paragraphs 3, 6, 8 and 10.

¹⁶² Article 2.

On the other hand, the Charter is innovatively framed on an open door policy of taking inspirations and consideration of subsidiary jurisprudential experiences from other International and Regional Human Rights Systems.¹⁶³ Accordingly, the unclear contents, ambiguities and gaps in different provisions of the Charter could be interpreted by the monitoring bodies¹⁶⁴ taking into consideration of the international standards and experiences of other monitoring organs. This approach is mainly important in contextualizing the different provisions and the substantive contents of rights into disability friendly versions.

Coming to the specific provisions of this document, we can find plenty of normative standards that are helpful in realizing the electoral rights of PWDs. Articles 3, 5 and 19 of the Charter deals with the fundamental notions of equality (at the individual level), inviolability of human integrity and dignity which apply equally to all human beings and the equality among people (as a group). Hence, these provisions clearly recognize the equality of PWDs as an individual and as group of people without any difference.

There are also specific provisions addressing the rights to receive information and freedom of expression,¹⁶⁵ freedoms of association and not to be compelled to join an association¹⁶⁶, the right to assembly¹⁶⁷, freedom of movement¹⁶⁸ as well as the right to special measures of protection in keeping with his / her physical or moral needs.¹⁶⁹ The respect of these rights to PWDs will undoubtedly minimize the marginalization of these people in the political and electoral spectrum.

With the help of the above instrumental rights, article 13 addresses the right to participate in the government of one's own country which is to be reflected in different ways. It must be noted that, article 13 is not as clear and detailed as the provisions of other human rights instruments

¹⁶³ See articles 60 and 61.

¹⁶⁴ Mainly of the African Commission on Human and Peoples' Rights which is established pursuant to articles 30 and 45 of the Charter. We have also the African Court on Human and Peoples' Rights which came in to existence in 1998 by its protocol. In fact, it has not been functioning well in the last 12 years unless practical effectiveness is witnessed once the merging court starts its operation.

¹⁶⁵ Article 9.

¹⁶⁶ Article 10.

¹⁶⁷ Article 11.

¹⁶⁸ Article 12.

¹⁶⁹ Article 18(4).

which recognize the same right.¹⁷⁰ Here is the value of articles 60 and 61 of the Charter which authorize the commission and the Human and Peoples' Rights Court to take inspiration from other instruments and other jurisdictions. This approach can help in case when it becomes necessary to clarify the narrowly dictated provisions of the charter like the case at hand under article 13. Therefore, this provision has to be interpreted with the contents of the right to political participation that are fully described in other norms.

Generally, it can be said that despite the ineffectiveness of the charter for not incorporating disability specific provisions guaranteeing the political and electoral involvement of PWDs, still the instrument is rich of ample provisions containing fundamental freedoms and human rights if affirmatively interpreted and equally applied to realize the electoral engagement of these people.

4.3.2 African Charter on Democracy, Elections and Governance (The Democracy Charter)

This Charter came into force mainly with the objective of maintaining peaceful change of government and the realization of democratic transfer of power in the states of the continent¹⁷¹. Being a recent instrument in the continent, the significance of good governance, popular participation, rule of law and human rights are the basic foundations of the charter¹⁷².

The document is relevant to the electoral rights of PWDs living in the continent in many ways. For one thing, the Charter emphasizes respect for human rights and democratic principles¹⁷³. It also provides for the promotion of representative system of government with effective citizen participation in the democratic, development and governance issues recognizing universal suffrage as inalienable rights¹⁷⁴. In addition to these values, it gives an assignment for state parties to eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds and any other form of intolerance.¹⁷⁵ Here also, it is clear that the provision is more illustrative and the intolerance or discrimination proscribed

¹⁷⁰ For example when it is compared with articles 20 and 21 of UDHR, article 25 of ICCPR, article 7 of CEDAW and article 29 of CRPD, this provision is not comprehensively structured with the full contents of the right to political participation.

¹⁷¹ The Democracy Charter is adopted by the 8th ordinary session of the AU Assembly, held in Addis Ababa, 30 January 2007.

¹⁷² See paragraphs 1, 2, 4, 5, 7 and 9 of the Democracy Charter.

¹⁷³ *Ibid*, at article 3(1).

¹⁷⁴ See articles 3(3), 3(7) and 4.

¹⁷⁵ Article 8(1).

would include that based on disability. Moreover, article 8(2) imposes an obligation on state parties to adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, PWDs and other marginalized and vulnerable social groups. Therefore, the Charter openly acknowledged that PWDs are part of the democratic and governance process and hence the rights enumerated in the document are equally applicable to them with the same value.

Article 6 also provides that, state parties shall ensure that citizens enjoy fundamental freedoms and human rights taking in to account their universality, interdependence and indivisibility nature of the rights. Article 17 of the same Charter also requires states to hold regular, transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa.

Therefore, if this instrument is interpreted and implemented in its full content with disability contextual meaning, no doubt it is an innovative instrument of the continent in the 21st century and it can contribute a lot in the move towards the inclusion of PWDs in the political and electoral system of their country.

4.3.3 The Women's Protocol

This is a Protocol additional to the African Charter on Human and Peoples' Rights¹⁷⁶. The primary objective of the instrument is addressing women's rights including those living with disabilities. Though there was the Inter American Women's Convention aimed at protecting the rights of women prior to this protocol, the Convention is limited to the eradication of violence against women. Whereas, this protocol is a composition of a range of all women's rights including their full participation in the politics of their country.¹⁷⁷

The most important value of the protocol is protecting women with disabilities who suffer a double jeopardy i.e. discriminations based on sex and disability. Accordingly, the protection of women's rights begins from the wordings of its paragraph which reaffirm the need for the promotion, protection and realization of women's rights and ensuring the practical enjoyment of the rights by these groups.

¹⁷⁶ The protocol was adopted in Maputo, Mozambique, on 11 July 2003.

¹⁷⁷ MA Badrin, 'Recent Developments in the African Regional Human Rights System,' Human Rights Law Review,, 2005. P. 118.

The detailed provisions of the protocol also recognizes the right to dignity¹⁷⁸ and non-discrimination,¹⁷⁹ in general to all women including those with disabilities. The protocol further enjoins state parties to ensure the right of women with disabilities their freedom from violence, discrimination based on disability and the right to be treated with dignity.¹⁸⁰

More relevant to the issue at hand, the right to participation in the political and decision making process is recognized under article 9. Women are entitled to have an equal participation in the political life of their country through affirmative action, enabling national legislations and other measures that could ensure their participation in all elections without any discrimination. Their right to be represented in all electoral processes at all levels equally with men and their involvement in the development and implementation of state policies and programs are explicitly recognized.

To sum up, women with disabilities are the most vulnerable and totally excluded groups of the society compared with non disabled men and women. Even, they suffer a lot than men with disabilities since they are suffering additional gender based discriminations. Therefore, the author strongly argues that this protocol should be interpreted and implemented in the way it can defend the marginalization of these persons in the political life of their country.

4.3.4 Declaration of Principles on Freedom of Expression in Africa

This declaration was adopted by the African Commission at its 32nd session held from 19-23 October 2002 and it is not a binding instrument. It is the outcome of the Resolution on the Right to Freedom of Expression the primary objective of which was expanding the extent of this right which is provided under article 9 of the ACHPR.¹⁸¹ Despite its non binding nature, the Declaration is full of plenteous values for ensuring the electoral rights of PWDs.

For better understanding of how “freedom of expression is a pivotal right for the effective participation in the public life in general and electoral proceedings in particular, it will be of importance if we make reference to the understanding of the Inter- American Court of Human Rights.

¹⁷⁸ See article 3 of the Women Protocol.

¹⁷⁹ *Ibid* article 2.

¹⁸⁰ Article 23.

¹⁸¹ The Resolution was adopted by the African Commission on Human and Peoples’ Rights at its 29th ordinary session, 23 April- 7 May 2001.

The court stated that; “Freedom of expression is a cornerstone upon which the very existence of society rests.... It is also a condition *sine qua non* for the development of political parties, trade unions.....and in general those who wish to influence the public.”¹⁸²

Accordingly article 1(1) of the Declaration recognizes freedom of expression together with the right to seek, receive and impart information and ideas. It is also stressed that the right to freedom of expression is an inviolable human right which is an indispensable component of democracy that should be exercised without discrimination of any kind.¹⁸³ Because, when an individual’s freedom of expression is unlawfully restricted, it is not only the right to freedom of expression which is the only right to be violated but also the right of others to receive information and the benefit of the society from the expression of new ideas.¹⁸⁴

Therefore, this declaration is relevant to the rights of PWDs mainly on issues of access to information and freedom of expression without which the right to electoral participation will have no meaning. To this end, this Declaration may be invoked as a crucial guideline for entitling PWDs to have access to information and freely express themselves using materials of their own media of communication like Braille and sign language. On this regard, the document calls for states to comprehend diversity and ensure pluralistic access to media and other means of communication for marginalized groups like PWDs.¹⁸⁵

4.4. The National Legal Frame Works and Electoral Rights of PWDs

4.4.1 Introduction

In the last forty years, Ethiopia has witnessed two governmental regimes and one transitional government.¹⁸⁶ Within these political arrangements, the country has been adopting different constitutional and legislative standards having contents of human rights, democracy, rule of law

¹⁸² Compulsory Membership in an Association Prescribed by the Law for the Practice of Journalism, American Convention on Human Rights, articles 13&29, advisory opinion OC-5/85, 13 November 1985, IACHR series, AN5 at paragraph 70.

¹⁸³ See article 1(2) of the Declaration.

¹⁸⁴ See *supra* note no.182 paragraph 73.

¹⁸⁵ Article 3, *supra* note no. 183.

¹⁸⁶ From 1974-1991 the country was governed by the provisional military council (PMAC) or *Dergue* in Amharic. Then, from 1991 -1994, the country has been administered by the transitional government (TGE). Since the first election held in May 1995, the ruling party Ethiopian Peoples’ Revolutionary Front (EPRDF) is exercising the power of administration.

and good governance. We have also general and specific rules governing electoral proceedings as a fundamental means of implementing active political involvement.¹⁸⁷ In fact, the major focus of this part is not to bring into picture of all the normative frame works that have been implemented in the country's political history. Rather it is restricted to those legal and constitutional standards having a binding effect in the current political and electoral environment of the country.

Accordingly, the Constitution of the Federal Democratic Republic of Ethiopian (here in after FDRE) is an anchor of this part of the paper. The first attempt to be made is, inspecting the general and specific provisions of the constitution having a direct relevancy to the political and electoral rights of the citizens of the country in general and PWDs in particular. Other legislations mainly the Amended Election law of Ethiopia¹⁸⁸, the Revised Political Parties' Registration Proclamation,¹⁸⁹ Amended Directive on the Registration of Voters,¹⁹⁰ Directive on the Registration of Candidates¹⁹¹ and Ethical Code of Conduct of the Media and Journalists in Reporting Elections¹⁹² will be analyzed and examined in the subsequent sections.

4.4.2. FDRE Constitution and Electoral Rights of PWDs

It has been almost 17 years since the 1995 FDRE constitution came in to force.¹⁹³ And since these years, four elections have been conducted in the country.¹⁹⁴ Being the supreme law of the land, the constitution is the foundational source of all rights that are supposed to be exercised before, during and in the post electoral procedures. This topic examines the potential and actual safeguards that the constitution granted to every citizen at large and to citizens with disabilities in particular in exercising their political and electoral rights.

¹⁸⁷ If it is worthy to mention, we have the 1987 Constitution, the 1991 Transitional Charter, the 1994 Federal Democratic Republic of Ethiopian Constitution and the repeatedly amended Election Laws of Ethiopia until the currently working Proclamation no. 532/2007.

¹⁸⁸ Proclamation no. 532/2007, adopted 25th day of June 2007, Addis Ababa.

¹⁸⁹ Proclamation no. 573/2008, adopted 24th day of September 2008, Addis Ababa.

¹⁹⁰ Directive no. 2/2008, came in to force 21st day of August 2008, National Election Board.

¹⁹¹ Directive no. 1/2008, came in to force 21st day of August 2008, National Election Board.

¹⁹² Ethical Code of Conduct Directive no. 6/2009 came in to force 14th of April 2009, National Election Board.

¹⁹³ The FDRE Constitution, Proclamation no. 1 1995, adopted December 1994 and came in to force 21st day of August 1995.

¹⁹⁴ The first election was conducted in May 1995; the second election took place in the year 2001 May. The most controversial and relatively more inclusive election was held in the year 2005 as a third round. Finally, we have the recently less sensitized electoral program in the year 2010.

The value of the constitution begins from its preamble. It notes that, the constitution is strongly committed to ensure a democratic order. It is further firmly convinced that this requires the full respect of individual and people's fundamental freedoms and rights.¹⁹⁵ The most credible contribution of the document lies in its recognition and domestication of international human rights norms ratified by the country as an integral part of the laws of the land¹⁹⁶. Despite the hierarchical controversies between the constitution and international human rights instruments, it is the constitution itself that give recognition to these norms. Even with regard to the interpretation of the bill of rights chapter i.e. chapter three of the constitution, article 13(2) explicitly reaffirms the need of conformity with International Human Rights instruments adopted by Ethiopia.

The author would argue that there are two important lessons that could be asserted from article 13(2): first of all, any national legislation including the provisions enshrined under chapter three of the constitution shall be interpreted and implemented in the manner consistent with the international human rights standards to which Ethiopia is a party. Therefore, in determining the contents and the limitations of the rights, our point of reference should be those of International Norms and Standards. Secondly, this article also indicates that the fundamental rights and freedoms are not static but dynamic by interpretation. Accordingly, through proper interpretation rules, the progressive improvements and updated conceptual and philosophical understandings of the rights should guide the practical meaning of the rights. For example, the current content and the practical understanding of the right to life is not similar with that of the perception before twenty or thirty years ago. The same is true in the understanding of the meaning and scope of the right to political participation.

Generally the merits of articles 9(4) and 13 of the Constitution can be summarized at least from three perspectives: First, they are licensing provisions for the applicability of International Human Rights instruments in the domestic sphere. Secondly, they are standards and qualifications on how the National Human Rights instruments should be framed, interpreted and implemented. Lastly and most importantly, they are indicative provisions of the country's commitment and obligation to be an active custodian of international and regional movements

¹⁹⁵ See FDRE Constitution *supra* note, no. 193, Preamble, paragraphs 1, 2 and 5.

¹⁹⁶ *Ibid*, articles 9(4) and 13(2).

bettering fundamental freedoms and human rights in different mechanisms like by adopting and ratifying those instruments.¹⁹⁷

Coming to the specific provisions of the constitution, it is apparent that all rights recognized in chapter three are all equally important to assure suitable environment for PWDs in every aspects of their daily life. However, for the major issue raised in this paper, we have provisions recognizing the right to equality and non- discrimination,¹⁹⁸ freedom of thought, opinion and expression,¹⁹⁹ the right to assembly, demonstration and petition,²⁰⁰ freedom of association²⁰¹ and the right of every Ethiopian national to the enjoyment of all rights, protection and benefits derived from Ethiopian nationality as prescribed by the law.²⁰² These are very crucial rights the better implementation of which can alleviate the exercising of electoral rights of PWDs.

As many other international and regional human rights instruments, the constitution does not mention the term disability as an expressly prohibited basis for discrimination of any kind.²⁰³ Therefore, the same approach must be taken to contextualize the provisions through positive interpretation of the rights in to disability inclusive manner. To this end, we can refer to the terms like “*everyone*”, “*every citizen*”, non-discrimination on “*any other status*” and discrimination of “*any kind*”. These terms may serve as bridges in the understanding of the provisions in the manner they can accommodate the fundamental concerns of these people like their access into the political and electoral tournaments of the country.

Complemented by all the above instrumental and procedural rights, article 38 declares much on the right to vote and to be elected and to take part in the conduct of public affairs directly and

¹⁹⁷ Accordingly, the country has been adopting and ratifying plenty of International and Regional Human Rights instruments. We can mention examples like, Proclamation no. 114/98 to ratify the African Charter on Human and Peoples’ Rights, Proclamation no. 613/2009 for the African Democracy Charter and proclamation no. 676/2010 for the CRPD Convention.

¹⁹⁸ See FDRE Constitution; *supra* note no.195, articles 25 and 35(2) and (3).

¹⁹⁹ *Ibid* article 29.

²⁰⁰ Article 30.

²⁰¹ Article 31.

²⁰² Article 33(2).

²⁰³ The only exception to this assertion may be article 41(5) of the Constitution which employ the term “physically and mentally disabled” in its recognition of a very comprehensive economic, social and cultural rights. Even this provision is defective in many ways. First, the terms used are not proper to describe these people. Secondly, the substantive content of the provision is a reflection of the old and outdated charity approach to disability. Thirdly, failure to mention these people in the rest of the provisions mainly in those guaranteeing the traditional civil and political rights while they are mentioned in the socio economic rights section might disseminate a misleading generalization that these people are not competent enough to exercise their political or electoral rights.

through freely chosen representatives. It also recognizes the right to be a member in a political organization, associations and trade unions and the like based on his /her own will. Accordingly all these rights should be equally allocated to and exercised by PWDs as every citizens of the country.

Finally little must be said about the practical and potential challenges on the issues of the mandate of interpreting the constitution and the impact of the rigid amendment procedures²⁰⁴ in contextualizing the provisions in to a disability friendly version. On one hand, we are arguing that the relevant constitutional provisions of chapter three are required to be interpreted to accommodate the basic rights of PWDs since these people are not expressly mentioned in the provisions. On the other hand, there is a jurisprudential controversy on the issue of “who has to interpret the constitution as a dilemma between the courts and the House of Federation.²⁰⁵ Therefore, the point to be noted here is, such inconveniencies should not be hindrances for maintaining the needs of PWDs and their constitutional guarantees through a contextual meaning of the rights.

4.4.3 Amended Election Law of Ethiopia

This proclamation²⁰⁶ is the working election law of the country since July 2007 through which the constitutional right of citizens to vote and to be elected is expected to be implemented. Therefore, the founding basis for this legislation is Article 38 of the FDRE Constitution along with other supplementary rights enshrined in it. The proclamation is composed of 111 provisions governing the pre, during and post electoral activities. It established the National Election Board and specifies its mandates. It also dictates the various rights and duties of active participants throughout the election process either as a voter, as a candidate, as election observes or as an

²⁰⁴ Article 62(1) gives the mandate of interpreting the Constitution to the House of Federation which is a politically established unit. This leads to the jurisprudential cues in the human rights spectrum of the country. For example, think of the rights which are relevant for effective electoral participation of PWDs. But these people are not expressly addressed in the provisions which recognize the rights. Accordingly, we are required to interpret and contextualize the rights for the specific needs of these people. However, courts are restricting themselves from their duty of promoting, protecting ensuring human rights alleging that they are not entitled to interpret the constitution. So how could it be possible to address the specific needs of these people? On the other hand, there are also appeals as to the rigidity of the amendment procedures required under article 105(1) on the fear that the practical difficulty of satisfying the conditions might hinder the possibility of updating the human rights provisions of chapter three with the current evolving human rights discourse one of which is the human rights of PWDs.

²⁰⁵ See more on the impact of this arrangement against the better enforcement of Human Rights in the country, Chi Mgbaro et; al, ‘*Silencing the Ethiopian courts: Non -Judicial Constitutional Review and its Impact on Human Rights*, 32 Fordham In’l L.J 259 2008 2009.

²⁰⁶ See *supra note*, no. 188.

official of the Election Board. The proclamation also contains procedural rules, time schedules and related technical and ethical issues.

The focus of this topic is not to analyze each and every issue addressed in this instrument. Rather it is selective of the wordings of the preamble and specific provisions that could be invoked as a legal basis to appeal for the various electoral rights of citizens with disabilities in the country. Accordingly, the preamble reaffirms the necessity of enabling all Nations, Nationalities and peoples of Ethiopia without any discrimination in the exercising of their right to self determination through their representatives elected in free and direct election.²⁰⁷ It is also confirmed that elections shall be conducted guided by electoral law that meets international standards. Most importantly, the preamble dictates the need to conduct free, fair and peaceful election at every level in an impartial manner and in which Ethiopians freely express their will on the basis of equal popular suffrage and secret ballot system.²⁰⁸

Political parties with different views are also entitled to participate in the election system. Their role of ensuring free, fair, peaceful and democratic elections by introducing their objectives, policies and programs is acknowledged. Therefore, the various values promised in the preamble are very crucial ingredients while interpreting the different provisions of the document in to the meaning that can best protect the electoral rights of PWDs.

Accordingly, citizens with disabilities like other citizens of the country are entitled to exercise their right to self determination through election. They are guaranteed to freely express their will on the basis of equal popular suffrage. For this purpose, they need to have access to information regarding the objectives, policies and programs of different political parties that could enable them to make their choice of preference based on informed decision. They can also run for elections either as member of political parties or as independent candidates to play their role in free, fair, peaceful, and democratic elections.

Coming to the specific provisions of this law, articles 5, 7, 26, 33, 36, 45, 47(1) and (2), 58, 59, 67, 71, and 89 are very vital in addressing the different electoral rights of citizens living with disabilities throughout the whole processes of the election. One of the objectives of the National

²⁰⁷ *Ibid*, at the preamble, paragraph 1.

²⁰⁸ *Ibid*, paragraph 3.

Election Board is enabling citizens to exercise their constitutional democratic rights to elect and be elected.²⁰⁹ Hence so as to realize this objective, the Board is expected to discharge multi-directional measures of legislative, administrative, technical and institutional arrangements.

Article 7 prescribes the powers and duties of the Board. Among these duties, providing public civic and voter education programs relating to elections, evaluating the implementation of periodical elections and electoral laws, undertake studies, collect and compile statistical data and identify the areas that require amendment²¹⁰ are the most essential elements that needs to be seen from the perspective of the rights of citizens with disabilities. Based up on these expectations, let us pose certain practical questions: to what extent is the Board working to create awareness through voter educations for these persons? Are public civic and voter education programs related to elections disseminated conveniently for these persons in Braille and sign language formats? Is there any statistical data that indicates the situation of participation of these citizens in elections either by voting or by contesting for elections in the last four elections? To what extent is the Board lobbying the responsible organs for the amendment of the existing laws or enactment of new legislations that could best realize the participation of these people in this core political activity? Therefore, these provisions are very essential to question the Board and other concerned organs whether they are acting accordingly or not.

Article 26 declares electoral principles serving as guidelines in the whole process of the electoral system. Accordingly, there are four fundamental principles which includes; one is the hosting of election on the basis of universal suffrage and by direct and secret ballot. The other principle entitles the electors to express their consent freely without discrimination. The third element is the right of every Ethiopian to be eligible either to elect or to be elected. This principle prohibits compulsion to exercise / not to exercise the right. The other is the notion of equal weight to each vote. These are the founding principles of this legislation and hence they are clear indications for the need of adjusting all electoral structures that could ensure the better feasibility of these principles from the disability rights angle.

On the other hand, Article 33 specifies conditions for registration to vote. These include the requirement of nationality, age and residence. There are also persons like those who are

²⁰⁹ *Ibid*, article 5(3).

²¹⁰ *Ibid*, articles 7(4)&(8).

undertaking a term of imprisonment passed by a court of law and those whose electoral rights are restricted by the law not to be eligible for registration to vote.²¹¹

According to the author's view, Article 33(3(a)) contains a restriction in unclear terms against the voting rights of a person who is assumed to be incapable of making decision due to mental disorder. Regarding the conceptual and theoretical rationality of this restriction, there are three arguments repeatedly raised by States to justify the depriving of the right to vote and the right to be elected of persons with mental disabilities. These include the notion of avoiding an irrational vote, minimizing incompetent vote and that of reducing manipulated vote.²¹² Accordingly, the fear is that the democracy itself will be corrupted if insane people are allowed to cast irrational votes. There is a misleading conclusion that persons with psycho-social disabilities or intellectual disabilities are not in touch with the reality. This is the result of perceiving these people as if they are irrational in their choice, as if they are not competent to make a choice and as if they are highly vulnerable of being influenced by the views of others.

The main point to be raised against these assumptions is the issue of what measures or indications are there as to whether a person is casting irrationally, incompetently and by the influence of others? Is there a rationality test? How far are we confident on the rationality of the voting decision of those who are sane? The reality shows that most votes cast are a mix of the rational and the irrational and it would be impossible to read the mind of the electorate to screen out votes that were in part or wholly founded on an irrational basis.²¹³

Similarly, there is no voter competent test that would assess all potential voters competency to vote and hence having a blanket prohibition on this criteria is inherently discrimination. Defining what it means to be capable to vote is a major difficulty embodied in most State election laws.²¹⁴ This is because, there is no scientifically determinable point on the spectrum of people's capacities where one can say a person has sufficient capacity to vote and hence defining the

²¹¹ See *supra* note, no 205, article 33(1) & (3).

²¹² The Fourth Meeting of the Committee of Experts on, *Participation of people with Mental Disabilities in Political and Public Life*, Mental Disability Advocacy Center (MDAC), Position Paper, November 2010, available at www.westlaw.org, (accessed on 14th day of February 2011).

²¹³ *Ibid* at p. 14.

²¹⁴ Nicholas F. Brescia, *Modernizing State Voting Laws that Disfranchised the Mentally Disabled with the Aid of Fast Suffrage Movements*, Saint Louis University Law Journal, volume 54: 943, 2010, p. 950.

criteria for “voting capacity” is an exercise in policy not in science.²¹⁵ How is competency to be determined? Is it to imply the political knowledge of the voter? Or is it referring to the mental capacity of the person in differentiating what is good and bad? What elements are objectively required in order to deprive the voting right of the person alleging that he/she is not competent to vote? All these questions are still in the gray area behind the allegedly raised justification of avoiding incompetency vote. Therefore, when a state establishes a capacity requirement, it should reflect the importance of allowing persons to perform the task even in the face of some degree of impairment, together with concerns regarding the possible adverse outcomes of the task if performed by someone whose capacity may be impaired.²¹⁶ Accordingly, restricting the voting rights of these people on the simple and unjustified allegations of their incapacity will amount to discrimination.

Regarding the other fear that especially persons with intellectual disabilities are more easily manipulated by the opinions of others, it is the fact that no one is truly independent and we all live with dependency and interdependence with others. Therefore, not only these people but all citizens are exposed to a wide range of opinions and it cannot be guaranteed that they are not influenced by others²¹⁷. With these understandings, many countries have amended their laws which restrict electoral rights of persons with mental health problems and intellectual disabilities. In countries like Estonia, Spain, France and Malta, the voting right of these people is legally recognized.²¹⁸ Even in countries like Austria, the Netherlands, Sweden and Italy, persons with mental health problems are entitled not only the right to vote but also all manifestations of political rights including the right to be elected.²¹⁹ In one case decided by the European Court of Human Rights,²²⁰ the applicant has been placed under partial guardianship after having been diagnosed by a psychiatric condition. Immediately, his right to vote has been restricted which the court found a violation of article 3 of Protocol no. 1 to the European Convention on Human Rights. Moreover, the court stressed that capacity to vote should not be identified with the legal

²¹⁵ *Ibid* at p. 951.

²¹⁶ Sally Balch Hurme & Paul S. Appelbaum, *Defining and Assessing Capacity to Vote, the Effect of Mental Impairment on the Rights of Voters*, 38 MCGEORGE L. REV. 931, 962, 2007.

²¹⁷ See, *supra* note, 212 at p. 16.

²¹⁸ See Mario Oetheimer, *supra* note, no.89 p.14.

²¹⁹ *Ibid*, at pp. 15-17.

²²⁰ ECtHR, *Alajos Kiss v. Hungary*, 20 May 2010, available at www.fra.europa.eu, (accessed on 10th of May 2011).

capacity of the person.²²¹ Therefore, instead of enacting discriminatory restrictive legislations, enhancing the participation of these people through the provision of accommodative measures like by giving descriptions of political programs and electoral process in simple language and illustrations, by providing assistances of their choice and with the help of the psychiatrists and by adjusting polling stations in hospitals and rehabilitative institution should be the primary focus of States.²²² In fact, one may raise the political and socio-economic incompatibility of our country with these countries as a defense for the legitimacy of the restrictions. However, it has to be noted that we are talking about human right to political and electoral participation which is universal and its enjoyment should not be dependent on the political, economic and social imperfections. Accordingly, the fact that Ethiopia is economically poor and cannot afford the costs of rehabilitation and effective treatment of these people should not justify the restrictions imposed against the voting rights of these people.

Even, in the African Continent where there are repeated allegations concerning the infancy of the human rights culture and the ineffective monitoring mechanisms, the African Commission on the African Charter on the Human and Peoples' Rights, has clearly acknowledged the voting rights of persons with mental health problems. On this regard, the case between *Purohit and Moore vs. the Gambia*²²³ can be cited as an interesting reference on the issue at hand. The complainants are mental health advocates submitting the communication on behalf of patients detained at Campama, a psychiatric unit of the Royal Victoria Hospital, and existing and future mental health patients detained under the mental health acts of the Republic of the Gambia.²²⁴ Out of many issues raised in the case, the voting right of Persons with mental health problems is addressed in paragraphs 74-76. Accordingly, the complainants submit the failure of the Gambian State to respect article 13 (1) of the ACHPR alleging that persons with mental health problems are denied of their right of participating in the government of their country including their right to vote.²²⁵ In its response to the allegation, the Gambian government invoked a defense arguing that allowing these people to enjoy the right to vote would open the country's democratic election to much controversy as the mental ability of these patients not sufficient enough to make

²²¹ *Ibid*, paragraph 7.

²²² See *supra* note no. 214, p. 20.

²²³ *Purohit and Another vs. the Gambia* (2003) AHRLR 96 (ACHPR), Communication 241/2001.

²²⁴ *Ibid*, paragraph 1.

²²⁵ *Ibid*, paragraph 73.

an informed decision.²²⁶ Finally the Commission stressed that “the right provided for under article 13(1) of the African Charter is extended to “every citizen and its denial can only justified by reason of legal incapacity and or that the individual is not a citizen of a particular state. Legal incapacity may not necessarily mean mental incapacity. For example, a state may fix an age limit for the legibility of its own citizens to participate in its government...”²²⁷ Most importantly, legal incapacity, as a justification for denying the right under article 13(1) can only come in to play by invoking provisions of the law that conform to internationally acceptable norms and standards. Accordingly, the commission condemned the legislation and the argument invoked by the state of Gambia stressing that there are no objective bases with in the legal system of the respondent to exclude mentally disabled persons from political participation.²²⁸ Impressing statement is also made by the Commission in another case concerning the notion of political participation in general. In the case between *Mouvement Ivoirien des Driots Humains (MIDH) vs. Cote d’Ivoire*,²²⁹ the Commission unequivocally emphasized that restrictions on political participation should not be unjustifiable and unreasonable.²³⁰ Moreover, the Commission noted that the right to vote and the right to stand for elections are rights attributable and exercised by the individual. That is why voting in democratic society, is by secret ballot, to the extent no one may know who the individual voted for.²³¹ Therefore, these positions of the commission can be raised as innovative approaches to question the rationality of the existing restrictive legal frameworks that exclude the voting rights of persons with mental health problems in the Ethiopian election proceedings.

On the other hand, the author again would argue that the value of these restrictive provisions against the voting rights of persons with mental disabilities seems inconsequential. For one thing, exercising the right to vote is solely dependent on the will of the voter. Therefore, if a person acknowledges and properly anticipate the benefits that he/she may enjoy as a result of exercising this right, the prior determined restriction on this right will be practically meaningless since a

²²⁶ *Ibid*, Paragraph 74.

²²⁷ *Ibid*, paragraph 75.

²²⁸ *Ibid*, paragraph 76.

²²⁹ *Mouvement Ivoirien des Driots Humains vs. Cote d’Ivoire* (2008) AHRLR 75 (ACHPR 2008), Communication 246/2002.

²³⁰ *Ibid*, paragraph 84.

²³¹ *Ibid*, paragraph 83.

person who is not capable of understanding the value of enjoying this right will be unlikely interested to exercise this right.

In addition to these, some might argue that the peace and disciplined electoral processes would be affected in case where persons with mental disabilities tend to disturb the polling stations where the general public is conducting elections. Such reasonable fears can be easily controlled if polling stations for these people are adjusted around their own rehabilitative institutions and hospitals. Even in areas where they are exercising their voting right together with the mentally sane voters, some fears of disturbances by these people might be handled together with other illegal behaviors that may affect the peaceful proceeding of the electoral process. Not only persons with mental disability, even a person who is presumed as sane might disturb the procedure inspired by some political motives. In such occasions, not only persons with mental problems, even those who are sane might be suspended not to exercise their voting right by giving priority to the public peace and for the peaceful electoral process to be held. Accordingly, mere anticipation of disturbances that these people may cause at the polling stations should not be invoked as a justification for the legitimacy of these restrictive provisions.

Besides these conceptual inconveniencies, coming to the practical difficulties, there are so many unsolved dilemmas from different perspectives: for one thing, what is the degree of mental incapacity? Who is going to prove whether a person is with mental disorder or not? What is the mechanism or means of proving such fact? Is it referring to the judicial declaration of the insanity of the person in accordance with the civil law provisions? If this is so, how it goes with the fundamental justification of the need for judicial or notorious declaration of insanity which is mainly intended to protect the person from his / her own and from 3rd parties actions that could detriment his/her best interest? Is the primary purpose of judicial declaration to restrict the person from exercising his/her rights? Or is it to refer medical proof of mental disorder? If so, when is the exact time to prove such defect? Or is it simply the decision of the election officials which is required for the implementation of this provision? Are there enough and competent medical and psychiatric centers and professionals in the country that could determine the mental situation of the person in question? All these are the practical difficulties while implementing these restrictive provisions.

Generally the author would argue that, the provisions which restrict the voting rights of persons with mental disabilities are required to be reframed in a clearer and practically meaningful sense and it is essential to recognize the presumed capacity to vote of persons with mental disabilities. For one thing, as it is raised in the above paragraphs, the commonly raised justifications behind such restriction are becoming subjects to the emerging counter arguments and their acceptability is questioned. Therefore, the country is required to amend these provisions or it has to come up with more justifiable and acceptable grounds for restricting the voting rights of these people if any. Otherwise, a simple declaration of such restrictive provisions can be seen as nothing but the product of out dated earlier thinking about mental disability. On the other hand, these restrictive provisions are not framed in such a way they are not open for practical inconveniencies. The manner of proving the mental incapacity, the time for proving such fact and against whom the burden to prove the mental status of the person is imposed should be clearly dictated. In the absence of such conceptual and practical reconsiderations, the restriction will be unreasonable both from its philosophical irrationality and in its practical difficulty.

Then we have article 36 of this proclamation which lays down the registration process. More specially, article 36(6) authorizes citizens with disabilities to get assistance from the person of their choice during registration. This is an innovative approach since having an access for registration is a precondition to exercise the right to vote. Articles 45 and 47 are also essential provisions for exercising the right to be elected. These provisions address the issues in relation with criteria for candidacy. Here also nationality, age, residential and linguistic and other requirements are expected to be fulfilled.²³² The right to stand for election also should not be restricted to the government employee who wishes to run for election either as a private candidate or as a member of a political organization without losing his/her benefits as a result of his/her running for election. Accordingly, these precognitions are very crucial for citizens with disabilities who like to run for elections and their disability should not be taken as a criterion to restrict them from exercising their right to be elected. Therefore all attitudinal, logistical and practical impediments that will go against the practicability of these provisions should be reconsidered accordingly.

²³² The conditions include being an Ethiopian, attaining the age of 21 and above, residing for two and above years at the place of candidacy and the ability to communicate with the working language of the region or the area of his intended candidature; see article 45 (1).

As another credible provision, article 67 gives the right for any elector to choose his/her assistant who needs assistance to put a mark on his ballot paper and insert it in to the ballot box. Accordingly, PWDs may choose the person who is going to help them while exercising their voting right. They are not duty bound to vote in front of someone who is not their choice. This is progressive mainly in protecting the privacy of voting at least by minimizing the possibility of disclosing the voice of the voter relatively compared with the vote conducted in front of an assistant who is not the choice of the voter.

Finally article 71 requires the Board to prepare the ballot paper that can be easily used by the voters and one that is not exposed to any fraudulent act. What do we mean by “Ballot paper that can be easily used by the voter? Is it not the duty of the Board to prepare ballot paper in the way that can be easily understood and used by citizens with different type of disabilities like Braille format for citizens with visual impairment? It is the view of the author that this provision clearly requires the Board to prepare the format of such type. The value of article 89 also should be seen as vital since it urges the responsible organs mainly of the Board to provide and facilitate awareness raising programs for voters. It is only through these civic and voter educational trainings that we can change the attitude of the society and of citizens with disabilities so that votes of these people could be based on informed decision.

In general, despite few ineffective provisions, if the Amended Election Law of the country is interpreted and applied taking in to account the needs of PWDs; it may be an input in the protection of the basic rights that citizens with disabilities are entitled to exercise in each aspect of the election system.

4.4.4 Political Parties’ Registration Proclamation no. 573/2008

As can be gathered from the different paragraphs of the preamble, this proclamation is dedicated to guarantee citizen’s freedom of association for their effective participation in peaceful and lawful political activities for assuming political power.²³³ Accordingly it prescribes the rights and duties of citizens when forming political parties and provides basic principles to be followed by political parties so as to operate with their full legal personality.

²³³ See *supra* note 189, paragraphs 1 and 2.

In the view of the author, having an access to party membership for citizens with disabilities is not a matter of choice. It is the only means available for them to throw away all attitudinal, financial, physical and other technical obstructions that may affect their courage and braveness to participate in the political life without fear of such constraints. Otherwise, it could be practically difficult for a person with disability (let say for example; a person with visual impairment) to contest election as this task requires campaigning, observing elections and other related activities. If these people are welcomed in different political parties, things may not be much complicated as they would in the private actions of these people to contest elections. They may attain their political dreams through the policies and programs of their party to which they joined willfully. It is then with these general understandings that the author found it necessary to address some provisions of this proclamation.

To look at some specific provisions directly relevant to the issue at hand, reference to articles 4, 5, 6, 10, 11, 15, 31 and 58 and examining their contents is a significant step. Pursuant to articles 4 and 58 of the proclamation, the right of every Ethiopian to form or to be a member of a political party of countrywide or at regional level is reaffirmed except with the condition of attaining the age of 18. The subsequent provisions stipulate some of the compositional and procedural requirements to form a political party.²³⁴

Article 15 of this proclamation dictates the contents and particulars to be addressed in the by-Laws of the parties. Specially, the requirement as to the equality of votes between every member of the party is essential. The voidable of any practice or the rule of the party having an effect of abridging the rights or obligations of a member guaranteed or imposed upon him as a citizen²³⁵ is also a very authoritative safeguard for citizens with disabilities not to be victims of discrimination of any type in their party.

Finally, it is worthy to notice that membership in a given political party is exclusively dependent up on the volition of the person. Accordingly, a member of a political party may at any time with draw from his/her membership.²³⁶ This may motivate citizens including those with disabilities to

²³⁴ *Ibid*, articles 5-8.

²³⁵ *Ibid*, article 15 (1&2).

²³⁶ *Ibid*, article 31(3).

make the choice of their preference without an anticipated fear of inconveniences in the future of their political life in that party.

Coming to the conclusion, the major ineffectiveness of this legislative is on the fact that citizens with disabilities and their specific needs are expressly addressed in none of its provisions. Therefore, it requires strong devotion and commitment of the different stakeholders mainly of political parties and the National Election Board on how to employ this legislation and its contents for accelerating party membership opportunities to these vulnerable groups of the polity.

4.4.5 Directive on the Registration of voters; Directive no 2/2009

This directive is issued by the National Election Board on the basis of its mandate assigned to it pursuant to article 7(19) of the Amended Election Law of the country which is addressed earlier. If best understood and implemented by all responsible parties, there are relevant provisions in this normative instrument that could be helpful in accommodating the rights of citizens with disabilities in their electoral participation as voters.

Article 13 of the directive requires election officials to establish comfortable polling stations at the centers and around easily accessible places for voters during registration and in the actual conduct of the voting. The same care has to be made when it becomes necessary of dividing or changing the previous venue.²³⁷ Effective implementation of this requirement is very crucial to minimize the physical barriers of PWDs that may hinder their access to reach the polling stations. This is the most practical challenge especially for persons with visual and physical impairments. One of the major difficulties of these people is the planting of polling stations at a place which is not convenient either due to natural or human made geographical setups. Therefore, due care must be given before choosing these places taking in to consideration of the safety for these people.

Article 18 also repeats the same ideas reflected under article 33 of the Election law. Hence every Ethiopian including citizen with disabilities is entitled the right to vote satisfying the conditions of age and residence. However, here again the defectively justified and unreasonable position of the election law that restricted the voting right of persons with mental disabilities is duplicated

²³⁷ See *supra note*, no. 190, articles 13(4&9) of the Directive.

under article 20(3) of this directive. Therefore, on the same counter arguments forwarded before, this provision should be updated and shall be amended in to the meaning full sense that can match with the current human right perception on disability.

On the other hand, article 21 and most of its sub- provisions provide for accommodative and assistive facilities to make election polls and procedures convenient to citizens with disabilities especially for those visually and physically impaired. This will be maintained if and only if the contents of this provision are widely interpreted in line with the special needs of these people.

4.4.6 Directive on the Registration of candidates; Directive no. 1/2009

The National Election Board issued this directive basing itself on the mandate assigned to it pursuant to article 110 of the amended election law. The primary objective of the directive is reinforcing the 3rd chapter of that proclamation which addresses issues in relation to the registration of candidates.²³⁸

The directive contains relevant provisions that would be helpful to provoke the needed stimulus for the involvement of PWDs in the electoral system as candidates either privately or by representing their political party. The directive is also relevant for these people in their request for the provision of encouraging facilitations that might be demanded for their success. Amongst these provisions, articles 5, 7, 12, 13, 14 and 17 can be cited as examples.

Article 5 prescribes the objective of this normative instrument. Accordingly, the directive aims to maintain a safe passage for every Ethiopian citizen to contribute a lot in the improvement of the country's democratic culture. This is to be realized by creating attractive environment for citizens while exercising their democratic right as a candidate to contest for election. Therefore, it is necessary to ensure that every citizen is entitled to exercise this right equally and without any discrimination. Hence, the right to be elected and any procedure and practice of nominating candidates should be transparent. These objectives are very crucial to protect citizens with disabilities from different mischief and technical inconveniences as well as procedures that could disfranchise these people from being competent for candidacy.²³⁹ To this end, once a person is an Ethiopian, and satisfies the linguistic, age and residential requirements, his/her right to be elected

²³⁸ See the National Election Law *supra note*, no. 206, articles 44-54.

²³⁹ See articles 5(1) and (2) of the Directive *supra note*. No191.

cannot be subject to any conditions like disability except for certain procedural and related matters required by the law.²⁴⁰

Article 13(1(c)) is framed with similar infection of out dated attitudinal perceptions that neglect the right to vote of persons with mental disabilities. The provision is not addressing the issue of “who should be candidate for election?” rather it is responding to the question of “who should support the person by his/her signature of support to fulfill the requirement of 1,000 (one thousand) people vote of support to compete as a private candidate.”²⁴¹ This is indirectly the right to vote and as already addressed in the previous topics, voting right should not be restricted putting such illicit grounds as a condition for competency to enjoy this right.

Article 14(2) denies citizens with mental disabilities of their right to be elected which the author may tolerate at least for the time being but with reservation on some practical issues. At least three reasons insist the author to compromise the spirit of this provision: for one thing, the restriction is relatively easier for implementation as the provision clearly prescribes medical certificate, judicial certificate or notorious insanity which requires somehow objective standards to test the mental incapacity of the person. This is relatively clear especially when compared with the other provision which restricted the voting right of the person with mental disability without indicating the manner of proving such mental incompetency.²⁴²

On the other hand from the conceptual point of view, one might argue that, exercising the right to vote demands less mental capacity than the principal responsibility of representing the voice of thousands as an elected person. Because, the fate of the people rests in the hands of their representative and the elected must be competent enough to accomplish the mission for which he/she is assigned by the public. Accordingly, it may not be sound to authorize a person with insanity to represent the public who cannot appreciate the interest of the people whom he is representing.

²⁴⁰ *Ibid* at articles 12(1-7) and article 15(1).

²⁴¹ According to article 45(3) of the Amended Election Law and article 12(5) of the Directive on the Registration of Candidates, a person is required to get the signature of not less than one thousand people as a vote of support to be registered as a candidate in his/her own private capacity.

²⁴² The provisions that restrict the voting rights of citizens with mental disabilities which includes article 33(3 (a)) of the Amended Election Law, article 20(3) of the Directive on the registration of voters and article 13(1(e)) of the Directive on the registration of candidates are not clear in the sense that none of them stipulated the means of proving the mental incapacity of the person, the burden of proof and the occasion when these provisions are applied.

In addition to this, exercising this responsibility is not a decision of one day like that of voting. Once a person is elected as a representative, he/she is expected to decide in every day on the matter that would be beneficial to his/her people at least up to the end of the period of his/her representation. Therefore, it is not at a single moment that the fate of the people at large that could be endangered. Rather it is every movement of the representative that could affect the needs and expectations of the public for repeated and longer period of time. On these and related grounds, restricting persons with mental disabilities not to exercise their right to stand for election may be justified. Moreover, the issue of public interest will come in to picture. The choice is defending the society from the unconsciously dictated decisions of the congressman which might lead to the disastrous consequences that the public may suffer in the overall political, economic, social and cultural affairs of the country.

Despite the fact that all these justifications might be reasonable, still there is one thing that must be noted; even this restrictive provision seems inconsequential when we think of the fact that it is unlikely for the public to vote for the person who is suspected of having mental disability. This logical expectation will be sounder when we think of the general attitude of the society about insanity.

Generally, the value of this directive should be appreciated on its non- discriminatory and transparently oriented objectives. However, its defects of depriving the voting rights of citizens with mental disabilities have to be reconsidered and should be framed in conformity with the emerging understandings on the agenda at hand.

4.4.7 Election Reporting Code of conduct of the Media and Journalists; Directive no. 6/2010

The legal ground for the enactment of this directive is article 59(4) of the Amended Election law which empowers the Board to issue such type of instrument. It is apparent that, in the conduct of any election, the role of the media and journalists is a critical asset throughout the process. Especially in countries like Ethiopia, where there are no sufficient media choices for the public other than those owned by the government, access to balanced, accurate, up-to-date and unbiased information is the basic requirement for free and faire election to be conducted.

Access to the media is not a matter of choice but as a necessity in the democratic building for which election is the only layout.²⁴³ It is through the media that awareness to the public is to be disseminated. The policies and programs of each political party and private candidate will reach to the public through the media. Campaigns and policy debates can be accessible to the voters if there is neutral and functional media and journalists who are loyal to their own professional ethics.

With these general values, coming to the specific concern of PWDs, they must be aware of the choices available for their decisions. Therefore, each and every service of the media should be adjusted with due attention for the inclusion of these people in the overall electoral processes. Generally, it can be concluded that, the political and electoral participation of these persons either as a voter, or as a candidate, or as a member of the decision maker, is highly dependent on the role to be played by the media and its staff. It is with this intention that the author found it necessary to deal with some of the provisions of this directive including its preamble.

The preamble specifies the different roles of the media and journalists and their contribution in the conduct of free and fair election in the country. The media is required to motivate the public and to forward relevant information that could enhance the quality of the society to come up with informed decisions. With this objective in mind, we may forward a question on the extent to which both electronic and press media are serving PWDs in the language they can understand, in the sign they can respond and in the manner they can react.

Article 3 of this directive dictates the objective of the code of conduct. Accordingly, providing and informing the public of those political calls from different political parties, notices from the offices of elections and forwarding free and neutral suggestions and evaluations of the election system are the primary targets to be maintained. However, the realization of this objective would be questioned if it does not accommodate the specific needs of PWDs that constitute a considerable portion of the country's population. On the other hand, the directive also prescribes the responsibilities of journalists,²⁴⁴ duties of the media²⁴⁵ and the responsibilities of election

²⁴³ Tracy J. Ross, *A Test of Democracy; Ethiopia's Mass Media and Freedom of Information Proclamation*, 114 Penn St. L. Rev. 1047 2009-2010.

²⁴⁴ See article 6 of the Code of Conduct, *supra note*, no. 192.

²⁴⁵ *Ibid*, article 7.

officials.²⁴⁶ These duties if properly performed by the specified duty bearers, they are relevant values for invoking the right of PWDs to freedom of expression and access to receive information which are fundamental ingredients of exercising their rights to take part in the electoral system of the country either as a voter or as a candidate.

4.5 Conclusion

In this chapter, attempt is made to show the legal protection of the right to electoral participation of PWDs. It was on this objective that the author deeply examined the contents of the relevant provisions of the International (UN), the Regional (Africa) and the National instruments having a direct link with the issue at hand.

Except to that of the CRPD, what is common to most of the instruments is the fact that “disability” and “PWDs” were not in the mind setup of the drafters of these instruments. This can be asserted from the fact that none of them expressly mentioned these terms in the provisions especially in which the political freedoms and electoral rights of persons are addressed. However, this doesn’t mean that these legal frame works are irrelevant in the movement towards the political inclusion of these people especially in the electoral spectrum. First of all, all of the instruments contain the fundamental human rights notions of equality, non-discrimination, dignity and solidarity through which disability is invoked as a human rights agenda. Other democratic values and entitlements like freedom of expression, access to information, the right to association, assembly and freedom of thought are also the common heritages of the instruments. Hence, there is no doubt that these values can serve as an effective conceptual and jurisprudential tools in the fight against the marginalization of PWDs in the political spectrum. On top of these, the rights to political participation mainly of electoral rights are expressly recognized in all of the instruments. What is expected is then interpreting and implementing these norms in to a disability friendly manner.

At the African Regional level, there is no disability specific binding Human Rights instrument. However, the same approach might be taken to reconsider the existing normative documents of the continent through interpretation so that they can give the same shelter and protection for the political and electoral life of PWDs.

²⁴⁶ *Ibid*, article 8.

Coming to the situation at the National spectrum, every Ethiopian National is guaranteed to enjoy and exercise such right by the different normative frameworks. In fact, the country does not have disability specific legislation which governs the political participation of these people. Of all the instruments that we have, the FDRE Constitution is fundamental document for realizing the golden principle of “nothing about us without us” slogan of PWDs to become actors in the electoral tournaments of the country. This is mainly on the fact that it recognizes international instruments and standards to which Ethiopia is a party as part of the laws of the land. It is also innovative in its strategic structure that the domestic instruments including the constitution itself should be in conformity with the international standards.

Concerning other legislations, despite their defective approaches of restricting the voting rights of citizens with mental disabilities, most of the provisions are essential in the move towards the request for the improvement of electoral participation of PWDs in the country’s public affairs and principally in the electoral processes. However, the practical value of the instruments is dependent on the contextual understanding and implementation of their contents taking in to consideration of the special desires of PWDs for effective and full enjoyment of their electoral rights.

Chapter Five

The Participation Spectrum in the Ethiopian Politics; Critical Survey of the Last Four Elections

5.1 Back Ground

Since the coming in to force of the FDRE Constitution and the establishment of the Federal Democratic Republic of Ethiopia,²⁴⁷ the country has held four consecutive elections in the past twenty years.²⁴⁸ During these electoral terms, citizens were participating either as a voter or as a candidate either in private or by associating themselves to political parties.

Despite the fact that the tournaments were dominated by one party system and their democratic standard is questioned, elections have been conducted within the five year interval as stipulated by the constitution. Again, in spite of apparent questions regarding the free, fair and justifiability of the electoral procedures and its results, the country witnessed the four parliamentary sessions that has been enacting laws and conducting other tasks both at the federal and regional levels.

Coming to the major concern of this paper, it is the belief of the author that we are at the critical time to question the status of PWDs and the role played by these people in the past 20 years political and electoral history of the country. However analyzing this situation is becoming a very difficult task mainly due to the following realities.

For one thing, there is no mutual consensus on the census and statistical data concerning the total number of PWDs in the country. For the World Health Organization (WHO), about 10% of the total population which accounts more than 7.7 million people lives with disability of different types.²⁴⁹ And this statistical prediction is confirmed by the federation of associations of PWDs and it is this number serving as the basis in its plans and programs.²⁵⁰ According to the 1994 census, it has been estimated that those people count 1.9% of the total population.²⁵¹ A year

²⁴⁷ See article 1, FDRE Constitution, *supra note* no.193.

²⁴⁸ See *supra note*, no. 194.

²⁴⁹ See, Japan International Cooperation Agency (JICA) planning and evaluation department, *supra note*, no. 2.

²⁵⁰ Concept paper prepared by Ethiopian Federation of Associations of Persons with Disabilities, 2007, p. 45.

²⁵¹ National Census Report, Population Census Commission 1994.

later, Base Line Survey of PWDs in Ethiopia declared the prevalence of disability at about 2.95%.²⁵² The recently published National Census Report reduced the number only to 805,492 out of 73,750,932 total population of the country.²⁵³ These disparities indicate the fact that the country does not have well- researched and attentively conducted statistical data on the issue. Just to indicate the inconsistency of the data at a regional level, again the recent national census report declared that PWDs in the Tigray Region are only about 69,017.²⁵⁴ To this extreme, the Tigrayan Disabled Veterans Association (TDVA) predicts more than 100,000 PWDs as victims of the civil war and the recent Ethio-Eritrea war alone.²⁵⁵ This number does not take into consideration the number of PWDs, the cause of whose injury was not the war.

Despite such inconveniency, there is no doubt that Ethiopia is a home of considerable number of PWDs. As one state among the 3rd world countries and being located in the sub – Saharan region, the country has been a victim of poverty, famine, drought, transmitted diseases. Until recent times, the country is known by recurrent internal and international armed conflicts throughout its history.²⁵⁶ Accordingly, the author strongly argues that, there is no question as to the necessity of well researched disability data that could serve as a basis in the future policy designing. However, the absence of such clear data at the moment should not be an obstacle and a pretext for ignoring the rights of these people.

More specific on the right to political participation, there is no yet statistical information in the country about the number of adult PWDs. This data is essential in determining their eligibility to exercise their right to vote or to stand for election or to be a member of a political party as “age” is one legitimate ground of restricting the right to political and electoral participation.²⁵⁷ But here too, it is pretty clear that there is large number of PWDs in the country who could qualify the age limit prescribed by the law.

Generally, as it could be dealt in the whole discussions addressed in this chapter, there has been no statistical profile done by the National Census Commission, the National Election Board, Regional and Federal parliaments and political parties which may give a clue to assess the

²⁵² See JICA Ethiopia, *supra* note no.2249, p. 34.

²⁵³ National census Report, National Population Census Commission, 2007, p.182.

²⁵⁴ *Ibid* at p.183.

²⁵⁵ A Brochure prepared by the TDVA Association, 2008, at p.2.

²⁵⁶ See *supra* note, no. 250, p. 45.

²⁵⁷ See article 38, FDRE Constitution *supra* note no. 247.

practical reality in the political life of these people. The lack of this information makes the task of examining the situation and the extent of their participation in the past elections difficult.

It is then with these constraints that the researcher opts to employ a wide range of interviews with the directly concerned personalities together with reference to some brochures, booklets and concept papers in this part. This can help at least to come up with some indicative findings on the issue at hand. And then, the findings may serve as a bell ringer for the above stakeholders and urging them for rethinking the political needs of PWDs and the status they would have in their future programs.

5.2 Introduction

In this chapter attempt is made to assess the participation spectrum of PWDs in the last four elections. To this end, the contents of the assessment are structured from the three perspectives of the traditional forms of political participation. The first part addresses the situation of the voting right of PWDs in the past four electoral experiences of the country since 1995. While analyzing this part, the proposed questions and the respective responses forwarded by the National Election Board officials and the opinions of PWDs themselves are critically scrutinized.

The second part covers the issue of the right to stand for election. In this regard, the composition of the two federal houses, i.e. the House of Peoples Representatives and the House of Federation is widely examined. Four regional state councils which include the *Tigray*, the *Oromiya*, the *Amhara* and the *Southern Nations, Nationalities and people's* (SNNP) state councils together with the House of Federation in the SNNP are also the principal targets. In addition to these legislative bodies, the paper also covers the situation in the Addis Ababa and Dire Dawa City Councils.

There are three reasons for the author while selecting these legislative bodies of the federal and regional states as a sample. For one thing, the recently published national census report reaffirms that most of PWDs of the country are residents of these regions.²⁵⁸ Accordingly, it is reasonable to expect that the number of active participants will be higher in these regional states councils. Secondly, the author presumes that the attitudinal awareness and developing a sense of disability

²⁵⁸ According to the 2007 Census Report, the total number of PWDs in each region is as follows: Tigray 69,017, Amhara 198,694, Oromia 282,544, SNNP 170,113, Addis Ababa 32,630 and Dire Dawa 3,778 respectively.

friendly approach is relatively better in these regions than the other parts of the country. At the same time, the federal houses represent the citizens and the nations, nationalities and people of the country as a whole and can be indicative of the situation at the national level. Therefore, the author believes that the samples are representative to say something about the fact whether the right to be elected and to hold seat at the legislative is becoming practically meaningful right for PWDs in the country. In this part, most of the information is obtained from the communication and public relation affairs offices of each organs and interviews made with the higher officials of those departments.

The third part tries to evaluate the tendency and extent of participation of PWDs as members of political parties. The primary targets of this assessment are some selected political parties. Accordingly, the researcher has consulted seven political parties which include, Ethiopian People's Revolutionary Democratic Front (EPRDF), Coalition for Unity and Democracy (CUD), Ethiopian Social Democratic Party (ESDP), The All Ethiopia Unity Party (AEUP), Ethiopian Democratic Party (EDP) and the Oromo Political Congress Party (OPCO) as well as Unity for Justice and Democracy (UJD). In fact, currently there are more than 90 political parties which are registered on the paper but albeit hardly effective on the ground both at the national or regional level. The above selection is made only to mitigate the time and financial constraints and by considering the easily accessibility of the places where the offices of these parties are located. Moreover, the author made an assumption that these parties are somewhat popular. They are also working at the national and regional level and the largest numbers of citizens of the country are actively participating in the political affairs of the country within the ambit of these parties.

Finally, the opinions and different views regarding the factors that are hindering the electoral participation of PWDS are summarized. The possible solutions, the organs responsible to implement the measures as well as related aspects forwarded by the interviewees are addressed in each section.

5.3 The Room for participation in the last voting procedures

Here is the literal interpretation of the verbatim of a person interviewed by the researcher which is mesmerizing and too much impressing: *"The fact that I cannot see does not mean there is*

*nothing I want to show, I cannot hear does not mean I don't have something to speak, the reality that I cannot move should not mean that others have to decide as to where I should go....*²⁵⁹

Despite this fact, the reality shows that PWDs had a very insignificant participation in the last four elections in the country as voters. Even they were not taken into consideration in most of the programs of the National Election Board. There has been no publication of the election laws of the country, Voter educational programs, election materials like ballot papers and other relevant information in the forms that could be understandable to these people. There were no disability specific trainings for election officials. The board does not have any statistical information that would give a clue concerning the extent of their participation as voters.²⁶⁰

Most of the PWDs interviewed are those who are relatively educated, financially better, and are working at a certain professional and official level. Moreover, most of them are officials and leaders in the associations of PWDs. Considering the practical challenges and their lower participation experience as a voter, one could imagine how things could be worst when we think of the situations faced by the larger number of the PWDs who are not educated, with meager income and residing in the rural parts of the country in their participation in elections.

5.3.1 Factors Affecting the Voting Rights of PWDs

According to the views of the persons interviewed, there are plenty of factors attributable to the lower participation of PWDS in this classical form of political involvement. The barriers can be summarized as attitudinal, technical and infrastructural factors.

5.3.1.1 Attitudinal Barriers

During their participation, PWDs experienced attitudinal social impediments as a challenge in the previous elections. These problems are both from the inside; to mean that PWDs have a low self esteem on their ability to participate in the political sphere of the nation due to the deep-rooted social neglect of these people, and from the outside, i.e., the community which these people are part of it. This is the result of long historical perception of the society on these people. In Ethiopia, there is a general tendency to think of PWDs as weak, hopeless and waiting their

²⁵⁹ Interview with w/ro Birhane Daba, President of Association of Ethiopian Women with Disabilities, interview conducted 11th of February 2011.

²⁶⁰ Interview with w/ro Yeshe Fekade, Public Relations Director , Ethiopian National Election Board, interview conducted on the 16th of March 2011.

death being dependent and without their own aspirations in every affairs of the community.²⁶¹ This impression and thinking of the society is agitating these people to develop a misleading assertion that they have no more “say” in the general affairs. Accordingly, their political interest is corrupted by the skeptical attitude of the society towards these people and they are sensitizing the feeling as if they are not qualified to participate.

The psychological influence is not only from the external community. Most frequently, the challenge begins from the family of PWDs. Instead of assisting the person in his/her daily career including the participation in politics and elections, the family prefer to hide and prevent him/her from the public scene. Because, there is a fear that the social interaction of the family will be endangered, since the cause of the disability is presented to be the sin of the whole family.²⁶² Therefore, the consequence of such influence is multi dimensional. On the one hand, the society is not accepting these people as if they can be actors in the political realm and in election. This psychological makeup has worsened the disregard of these people by the responsible personalities since the authorities themselves are individuals from the community itself. These stigmatizations and the different stereotypes are influencing them to feel the sense of “otherness” and to restrict themselves from participating in the voting procedures.

5.3.1.2 Technical and Procedural Barriers

Most of them feel as if they are totally neglected by the government, political parties, and the National Election Board, which is an organ directly responsible to administer election proceedings. They raise justifications like the absence of disability focused awareness raising programs. They don’t like to vote because they don’t know who the candidate is? What policies and programs are the bases of his/her candidacy? Information and notices regarding the time and place of elections are not broadcasted in the way that PWDs could access and understand.

Generally, most of them argued that in the past four elections, PWDs were not active participants since they were not capacitated to make informed decisions. They pose a question stressing that;

²⁶¹ Tirussew Teferra (PhD), *Disability in Ethiopia: Issues, Insights and Implications*, Addis Ababa Printing Press, 2005, p.57.

²⁶² *Ibid* at p. 61.

in the absence of these opportunities, how could it be possible to discharge this national political vocation as a responsible citizen?²⁶³

The common defense raised by the responsible organs especially of the Government, the National Election Board and political parties is that of the financial problem. However such a defense cannot justify the marginalization and total exclusion of these people in the voting procedures. While it is a general problem of the country, using it as a pretext for the general exclusion of these people in elections may be far from the logic. Therefore, the counter argument is that, the poor economical status of the country should not be abused to justify the disfranchisement of PWDs from exercising their voting right.

5.3.1.3 Infrastructural Barriers

Passing through the bottlenecks of the above attitudinal and information related Challenges; still there are PWDs who opt to exercise their political rights in elections. However, these persons are again expected to jump over the infrastructural and physical barriers. There is no due attention for these people while fixing a place as polling station. Accordingly, they are facing a difficulty of accessing these places for registration and for voting. One of the interviewee with physical impairment has to say this; *“in the recent 2010 election, I went to the polling station to be registered and have a card for voting. The place chosen was not comfortable for me since there is a project as part of the reconstruction of the Addis Ababa city. With all of the challenges, I have got the card and I told those who were administrating the registration to rethink about the place during the day of the election. On the day of the voting process, there was no change. Then, I get back to my home being unsuccessful of exercising my right!”*²⁶⁴ It may not be difficult to imagine what would be the situation in the rural and geographically inconvenient parts of the country if such an awkward situation is commonly happening at the capital city of the country.

²⁶³ The ideas are summarized from the opinions forwarded by (1). Ato Kasahun Yibeltal, former president of federation of associations of persons with disabilities (currently serving as a consultant of the federation), interview conducted on 26th of February 2011. (2) w/ro Birhane Daba, *supra note* no. 259. (3) Ato Atsibiha Aregawi, member at the HPR and chairman of the standing committee on city infrastructure and construction affairs, interview conducted on 29th February 2011. (4) Ato Ayele Giduma, member at the HPR and the social affairs standing committee, interview conducted on 3rd of March 2011. Ato Gebre Addisu, public relations director, Association of persons with visual impairment, interview conducted on 5th of March 2011. (5) Ato Solomon Tadesse, HPR member and officer at the social affairs standing committee, interview conducted on 3rd of March 2011. (6) Ato Addis Legesse, director of legal affairs and lecturer at the law school, Wollo University, interview conducted on the day of 21st December and other persons.

²⁶⁴ See *Supra note*, no. 259.

Related with this problem, persons who are administering elections are not committed and well trained on how to treat PWDs. Even though the election law permits²⁶⁵ PWDs to get assistance from a person of their choice, this is not practically happening and the privacy of these people is abused especially in the country side. All these practical constraints supplemented by related problems like transportation and communication barriers are discouraging PWDs. And this challenge is becoming obstruction against the political aspirations of these people.

On the other hand, there is no custom of inviting PWDs to observe elections. Had there been such opportunity for these people, it could have served as a better means of reminding all the responsible organs mainly of the National Election Board to pay attention for the special needs of PWDs in order to exercise their voting right properly and conveniently. In addition to this, if we have these people as observers and as officials in polling stations, they can minimize the common misunderstandings and mistreatment on which the non- disabled coordinators are usually blamed. While other countries are experiencing this innovative approach²⁶⁶, such good practice was not practiced in the past elections of our country.

To sum up, in the past four elections conducted in the country, PWDs were not exercising their right to vote and their participation in the casting procedures was insignificant. This unmeaning record of their participation is mainly attributed to the attitudinal impediments, inaccessibility of information and awareness raising programs, physical and infrastructural barriers as well as technical and procedural difficulties.

5.4 PWDs and Access to Have a Seat in the Legislature

After the coming in to force of the FDRE Constitution and the establishment of the Federal Democratic Republic of Ethiopia, the country has been exercising the federal form of government. Accordingly, both the federal and the regional governments are organized having a law making, law interpreting and law enforcing bodies of their own.²⁶⁷ That is why; this part intends to assess the composition of the two federal houses and six regional state and city council

²⁶⁵ See article 67, Amended Election law of Ethiopia, supra note no. 188.

²⁶⁶ For example, the African state Ghana has a good experience of inviting and appointing PWDs as election monitors and observers. See the report of International Foundation for Election Systems (IFES), available at www.ifes.org, (accessed on 29th of March 2011).

²⁶⁷ See article 50(1) & (2), FDRE Constitution.

legislative bodies with a focus of scrutinizing the involvement of PWDs in the last four electoral terms as elected members of the houses.

5.4.1 PWDs and their Engagement at the Federal Houses.

At the federal level, the FDRE Constitution established two houses. The House of Peoples Representatives (HPR) is the highest authority of the federal government. Currently it is composed of 547²⁶⁸ members who are directly elected by the people as representatives of the Ethiopia people as a whole. They are supposed to be governed by the constitution, the will of the people and their conscience.²⁶⁹ The House is functional for a term of five years with principal mandates of enacting laws on matters vested to the federal government, calling and questioning the executive and take follow up measures of ensuring the practical enforcement of the laws, politics and programs enacted by it.²⁷⁰ With a mandate of exercising these powers, the House has been functioning for the last four terms with a change of its members at each five years interval.

During the first and the second electoral terms,²⁷¹ the composition of the House shows the total exclusion of PWDs. In the first term, no person with disability acceded as an elected member of the House as far as the knowledge of the persons interviewed. During the second term, there was one individual with disability from the leading EPRDF party. At the third round, the number increased to around four PWDs and all of them except the one were again from the ruling party. In the current composition of the house i.e. the fourth term, there are only three persons with disability who are actively participating as a member and as incumbent office holders in different standing committees.²⁷²

The other important fact is that, the cause of the disability for most of these persons is directly linked to their involvement in the civil war which resulted the coming in to power of the ruling government. Almost all of them are members from this party. This shows an implication that these people already started their political struggle just before the injury that caused their disability. Accordingly, some argued that these persons have got an access to have a seat in the

²⁶⁸ As it is clear from article 54(3) of the FDRE Constitution, the members can be but not exceeding 550. Out of this number, 20 seats are reserved for special representation of the minority Nations, Nationalities or People. This may serve as a promising opportunity for implementing the quota system in the house.

²⁶⁹ *Ibid* at article 54(4).

²⁷⁰ See the details on the powers and functions of the HPR in articles 51 and 55 of the FDRE Constitution.

²⁷¹ Elections that have been conducted in the years 1994 and 2000 respectively.

²⁷² Interviews with Ato Atsibha Aregawi, Ato Ayele Negede and Ato Solomon Tadesse together with other employees at the Communication and Public Affair Office., see *supra* note, no. 263.

house owing to their contribution and the sacrifice they paid in the hard fought struggle which overthrew the previous *Dergue* regime. And further they argued that, the presence of these few PWDs in the house does not support the allegation that they are adequately represented. Whatever the arguments may be, there is no doubt that, PWDs were not acceding in this highest authoritative law making organ of the country.

The other house at the federal level is the House of the Federation which is composed of representatives of the Nations, Nationalities and People of Ethiopia. This organ is mandated to exercise the power of interpreting the constitution and to decide on issues relating to the rights of Nations, Nationalities and Peoples to self determination including the right to session.²⁷³

With the objective of discharging these and related functions, the house has been established having 108, 112, 121 and 135 members respectively from the first up to the fourth term which is currently functioning.²⁷⁴ The most surprising reality is that no single person with disability has been participating as a member throughout the four working terms of this organ.²⁷⁵ Accordingly, no Nation, Nationality and People have been represented in the House of the Federation even by a single individual with disability in the last four electoral terms.

Now, let us come to the point; what implication could these realities indicate? From these factual circumstances, one can easily underscore the fact of the total exclusion of PWDs in the composition of the House of Federation and insignificant “say” at the HPR. In the country where a considerable number of PWDs are living, the total disfranchisement of these people from the law making representative organ cannot by any means be a sign of democracy.

5.4.2 The Room for Participation at the Regional State and City Councils

Like that of the federal houses, the same trend is happening at the Regional State Councils and the two City Administration Councils. This can be seen from the individual composition of the Councils of each state. To begin in the Tigray Regional State, the council is structured to have one hundred fifty seats. Out of this number, during the first electoral term, there was only one

²⁷³ See the details on the powers and functions of the House of the Federation in articles 61 and 62 of the FDRE Constitution.

²⁷⁴ See the official website of the House of the Federation at <http://www.hofethiopia.gov.et>, (accessed on 25th of February 2011).

²⁷⁵ Interview made with Ato Gebre Alemayehu, the House of the Federation communication Affairs Officer. Interview conducted on 24th February 2011.

individual with disability who joined the council as a member. In the second term of election, no one has got the opportunity to have a seat in this legislative body. In the third round two persons with disabilities were elected as members and they have been actively participating. In the current team of the council, there is only one individual with disability.²⁷⁶ Accordingly, in the last twenty years of the history of the council, there were only four PWDs who won the popular election and have got the status of membership in the council. In addition to this, all of them are members of the leading party; the Tigryan Peoples Liberation Front (TPLF).

In the region where there are minimum of 69,017²⁷⁷ PWDs or where there are more than 100,000 victims of the civil war,²⁷⁸ it is reasonable to expect more PWDs in the house. Therefore having this insignificant number in the highest organ of state authority is a clear indication of the total marginalization of these people and the inaccessibility of the room to campaign for elections. This shows the practical difficulty and the absence of a plain level for these people so as to enjoy their right to be elected in the region.

The situation seems even more disastrous when one looks at the practical experience in the Amhara National Regional State Council. The council is a formation of two hundred ninety four (294) seats for representatives. Out of these members, none of them has been a person living with disability except one person in the current composition.²⁷⁹ Therefore, in the past three electoral terms, the door of the council has been totally closed for PWDs. Even in the current team of the members, the existence of one individual out of 294 members cannot be considered as a sufficient enough indication of the progress.

Here also, in the region where there are more than 198,694 residents living with disabilities,²⁸⁰ a highest state authority with no single opportunity for these people to have a “say” in its decision making procedures is difficult to call it as an organization which is competent enough to demonstrate the golden notion of representative democracy. This total exclusion is also the direct

²⁷⁶ Interview with Ato Kahsay Aregawi, Communication and Public Relations Directorate Director, Tigray National Regional State Council, interview conducted 10th of March 2011.

²⁷⁷ See *supra* note no.253.

²⁷⁸ See *supra* note no. 254.

²⁷⁹ Interview with Ato Merkebe Fente, Public Relations Directorate Director, Amhara Regional State Council; interview conducted on 2nd of March 2011.

²⁸⁰ See *supra* note, no. 258.

indication of the attitudinal and customary barriers that the society is highly infected and the lack of trust and confidence on the competency of these people.

The other target of the assessment is the Oromia National Regional State Council. Like the others, four elections have been conducted and the council has been established four times. During the first election, the house has been composed of 353 members. After the second term, the number grew up to 537 members elected from 179 polling stations.²⁸¹ Throughout its functional periods in the past twenty years, the council has been opened only for two persons with disabilities which happened during the third election. Even one was from the opposition party and he stayed as a member only for a year until he left the country after his immunity is revoked.²⁸² Here also, the situation is reflecting similar disfranchisements. The region which is accommodated as a resident of more than a quarter of a million PWDs does not have a legislative body with a “say” for these people.

The SNNP National Regional State Council is not also an exception to the situation. Unlike the other regional state councils, the number of seats was not stagnant until the third term of election. Accordingly, during the first term, the house was composed of 240 members, in the second round; the number grew up to 346 seats. In the third and the present working seasons of the house, it has become an organ constituting 348 members.

During the four electoral terms and the last twenty working years, the council was functioning excluding PWDs as its member except for two persons who succeeded in tackling the various stereotypes and become elected members of the council in the third round.²⁸³

The other peculiar feature of this Region is the existence of another house which is composed of representatives of each Nation, Nationality and People in the region. This body is established with a mandate of interpreting the constitution of the state, settling disputes and other conflicting interests that may arise between two or more NNPs in the region. The House is composed of 62 members representing the fifty six Nations, Nationalities and Peoples of the region. With similar

²⁸¹ Office of the Speaker and the Secretariat of the ‘Caffee’ of the National Regional State of Oromia, About the ‘Caffee’ Brochure, 2007, p. 4.

²⁸² Interview with Ato Negash Tolla, Communication Affairs Senior Expert, Office of the Speaker and the Secretariat of the ‘Caffee’ of the National Regional State of Oromia, interview conducted on May 12, 2011.

²⁸³ Interview with Ato Zewdu Dessie, Minutes and Documentation Officer, SNNP Regional State Council, interview conducted on April 23rd 2011.

facts of the other house, no single person with disability acceded to this organ representing his/her Nation, Nationality and People.²⁸⁴

What can be asserted from these statistical indications is the fact that, the region and its people are not ready enough to have a confidence on these people's political commitment. Accordingly, there is no a plain field for PWDs so that they could enjoy their right to be elected and stand for election. Hence, PWDs who counted more than 170,113 share of the total population of the region are not given access in the two houses and they are not having a chance of declaring their position in these very significant pillars of the region's political structure.

When we come to the situations at the city councils of Addis Ababa and Dire Dawa, it is for the first time that these cities are arranged to have their own City Council with a legislative mandate. Accordingly, it is the existing legislative organ of these cities to be analyzed here. In the city of Addis Ababa, the council is established with 138 seats and it is functioning having these members. Out of these persons elected as members of the council, there is only one individual with disability who becomes the member of this authoritative body of the city.²⁸⁵ Similarly, Dire Dawa city council is organized to have 189 members and none of them is a person living with disability.²⁸⁶

Therefore, the reality screams out that, the situation in the cities is all the same with the regions though the cities have relatively better attitudinal makeup and somehow informed society. In the cities where there is higher expectation of democratic thinking and where there is relatively conducive political environment to campaign for elections, these people are yet marginalized and they are not welcomed to have a role in the legislative bodies of these cities and no room is opened to accommodate them. Therefore, there can be no evidence that could best exemplify the situation better than these realities in the country.

Generally, what can be inferred from the practical realities as critically scrutinized in the four regions and the two city councils is the fact that, the existing constitutional and legislative

²⁸⁴ Interview with Ato Hailu Kassaye, public Relations Officer, at the SNNP House of Federation, interview conducted on April 23rd of 2011.

²⁸⁵ Interview with Ato Kassahun Dingetu, Data Base and Information Officer, Addis Ababa City Council, Office of the Speaker, interview conducted on 5th of April 2011.

²⁸⁶ Interview with Ato Girma w/yohannes, Member of the City Council of Dire Dawa, interview conducted on the 3rd of May 2011.

guarantees of the right to “every citizen” to stand for election are not enabling and giving effective assurance for PWDs for their participation in the country’s electoral tournaments. The general state of things is showing the total exclusion of these people and their invisibility in the highest authorities of the federal and regional governments.

Then the next issue will be the “why” question. Are PWDs themselves who are restricting and renouncing their right to stand for elections? Are the attitudinal, legislative, economical and technical facilities convenient to these people so that they can exercise the right? What caused these huge practical gaps in the country? The next section summarizes the different views and opinions forwarded by the various groups interviewed on the issue at hand.

5.4.3 The Root Causes for the Invisibility of PWDs at the Legislature

Many factors are suggested as hindrances affecting the political rights of PWDs in their movement to contest for elections. Many people pointed their fingers against the complicated social empathy and feelings as well as values and dispositions of the society towards disability and its consequence. There is no doubt that the society is cooperative and committed of assisting PWDs. But this devotion does not extend beyond the provision of bread and humanitarian assistance. Giving political trust and confidence to PWDs is far from the state of mind of the people. Still there is a higher tendency of linking political capacity and skillful leadership with the physical setup. Still there is no confidence in the society that people who are living with disability can challenge the political battle. This is the consequence of the country’s history that has been dominated by hostilities and non-peaceful battle to assume power.

Beyond this, PWDs are usually perceived as unfortunate and unlucky sections of the society. They are considered as persons who are undertaking their punishment from God or Allah as a curse of their sin or of their parents. Blinded by these state of mind, the community is not ready enough to award its vote for these people. Accordingly the general public is not aware and appreciative of the capacity and role that could be contributed by these people in a representative or that of the direct democracy.

Others also pose a question to PWDs themselves. They blamed these people alleging that most of them do not have the interest and passion to want to aspire for politics. They are not acquainting

themselves with the necessary knowledge, experience, confidence and skill for political battle. They don't want to understand the dynamics and intricacies of the political game.²⁸⁷

The above argument is not accepted and does not seem sound for others. Even though it is pretty clear that, interest of an individual is the first step towards the political life, this by itself is not an end unless facilities are fulfilled. The passion in itself would bring nothing unless the person is equipped with the different adroitness. To this end, the financial constraint takes the lion's share. It is clear that contesting for election is an expensive game. Coupled with this reality, it is not secret that most of PWDs are living below poverty line and they cannot afford the economic cost of the battle. It is not the lack of knowledge or experience that is deterring these people from campaigning. Even politics and political participation are not always dependent of knowledge and experience. It is acceptance from the public that matters a lot and if the public does not welcome them with confidence, all other prerequisites may not matter that much.

In the view of the author, there is no doubt that knowledge and experience together with interest are essential for the successful political life of a person. Therefore, we need to create opportunities for these people like exposures and awareness raising programs, trainings and disability friendly approaches in every decision making procedures of the government at different levels. In addition to this, in the absence of mechanism through which PWDs can reach and contact the public at large and introduce themselves and their visionary programs, their acceptance and trust by the community cannot be assured. To this end, economical and logistical strength is vital. Had there been an open minded society and disability friendly governmental structure, the fate of these people would not have been the total exclusion in the game.

The other factor pointed as a hindrance for the better inclusion of PWDs in the electoral campaign is, the general meaning given to the term politics and the popular fear towards political participation. There is a common attitude that politics is a dirty game and there is the fear of the struggle as an electric shock. This imagination seems more sensitive for PWDs. They are the most vulnerable groups and they feel that they cannot accommodate the bad consequences of the game.

²⁸⁷ See interview with Ato Ayele Negede, supra note, no.272.

On the other hand, experience shows that, in the country's electoral campaign, instead of competing in private capacity, being a member of political parties is regarded as the best way of struggling for peaceful electoral contention. Therefore, joining a political party of their choice would make PWDs beneficiaries in different angles. Because, they can challenge their financial, informational and environmental as well as the physical inconveniencies they are facing with. However, as it will be noted in the coming section, the participation of these people as members of the different political parties is extremely insignificant. This defective experience has its own impact for the invisibility of these people in the legislative bodies of the federal and regional governments.

Finally but most importantly, the absence of disability specific election law in the country is worsening the problem and is raised as a gap. This can be evidenced from the stagnant trend of attracting PWDs that the country has experienced in the past four elections in the composition of the law making bodies. Had there been a disability specific election law in the country, it could serve as an effective enforcement tool of the generally stated electoral rights in the constitution and other international and domestic instruments in the way they can be exercised by PWDs. The absence of disability specific election law is conditioning the practical values of the rights to be dependent on the good will of election officials and other stake holders. Had there been a normative guideline which prescribe the specific procedural and material assistances for these people, the specific duties of the National Election Board, the government and political parties on how to facilitate the right to be elected of PWDs, these organs would not have been reluctant on the issue at hand. In the existing situation, contextualization of the existing laws in to a disability approach is the only option available. But this is unlikely happening and PWDs are not enjoying the protections of the existing legal frameworks in the exercising of their right.

5.5 Political Parties and People with Disabilities

In the country, there are more than ninety political parties registered by the National Election Board²⁸⁸ at least on paper though their functionality on the ground is not satisfactory. This section tries to examine the situation and the status of PWDs in selected political parties which are relatively operating better in the political spectrum of the country.

²⁸⁸ See *supra* note no.260.

The Ethiopian People's Revolutionary Democratic Front (EPRDF) is the largest political party in the country. The total number of its members, its organizational and logistic structure, its experience of leading and administering the country for the last two decades and its financial stability may be cited as its qualities. Being the ruling party, EPRDF is supposed to be in a better position of accommodating the needs of PWDs and to facilitate the political desires of these people. On top of this, most of the senior members of the party were actors in the battle during the civil war that defeated the *Dergue* regime. Accordingly there is a reasonable expectation that considerable number of PWDs could be members to this party.

Currently there are about 5.6 million members of EPRDF. However, the party does not have any statistical profile indicating the number of PWDs who are members to it. In addition to this, there are no disability specific incentives and capacity building programs in the by-Laws of the party to attract the political activeness of these people in its programs despite the general invitation to everybody to become a member.²⁸⁹

Together with these facts, the insignificant role of PWDs in the party's peaceful political struggle can be analyzed from two factual perspectives: for one thing, as it is examined in the previous section, the legislative organs of the country both at the federal and regional level were not opened and afforded to PWDs in the past four elections. At the same time, the absolute majority of the seats of these bodies has been and is still controlled by members of this party. Combining these two facts together, one can easily analogize that, it is the EPRDF which is supposed to be directly responsible for the invisibility of these citizens at the legislature. Because it may be sound if one expects a relatively higher number of PWDs in the legislative which is absolutely dominated by a party with in which greater number of these people are members to it.

Accordingly, it can be said that, had there been effective and disability sensitive strategies in the political programs of EPRDF, situations might not be as they are today. Taking into account of its absolute dominancy both at the regional and federal houses, one can say that, the potential and the capacity to change the current disfranchisement of PWDs in the political and electoral programs of the country is mainly in the hands of this party.

²⁸⁹ Interview with Ato Bonsa Baysa, Domestic Relations Director, the Office of EPRDF, interview conducted on the day of 1st March 2001.

Coming to the situation in the opposition parties, six opposition political parties are consulted with the purpose of analyzing the degree of participation of PWDs in the political struggles of these parties as members. All Ethiopians Unity Party has an estimated 1.5 million members with organizational arrangements in 70 *Zones* and 350 *Woredas*.²⁹⁰ Similarly, under the umbrella of Coalition for Unity and Democracy Party, there are more than 350, 000 members.²⁹¹ The Ethiopian Democratic Party,²⁹² Unity for Justice and Democracy party,²⁹³ The Oromo People's Congress²⁹⁴ and The Ethiopian Social Democratic Party²⁹⁵ also have considerable number of citizens who are actively participating in their political programs.

Most of them unequivocally admitted that PWDs were not their principal targets. The role of these citizens in the political struggle of each party is very uncommon. Even though some of the parties incorporated disability specific provisions in their by-Laws and future plans²⁹⁶, the provisions and plans of programs are not meant to provide incentives, special facilities and attractive political opportunities for PWDs. The programs are designed with objectives of assisting these people in other social and economical as well as health related needs. There are no programs on how to attract these citizens and make them the principal actors of the peaceful political struggle under the umbrella of the party. They are perceived as passive beneficiaries of the programs.

On the other hand, most of opposition parties are not financially strong and they cannot afford urgent needs of PWDs. As a result of this, they are not the first choices of citizens with disabilities. Because, in order to be active role players, PWDs need to feed themselves, they need to get a secured job and want to sustain their daily life. However, the immediate and short term

²⁹⁰ Interview with Ato Yakob Like, Vice President of All Ethiopians Unity Party, interview conducted on 13th of April 2011.

²⁹¹ Interview with Ato Sasahulih Kebede, Secretary General, Coalition for Unity and Democracy Party, interview conducted on 16th of February 2011.

²⁹² Interview with Ato Ermias Balkaw, Member of the Central Committee, Ethiopian Democratic Party, interview conducted on 18th of February 2011.

²⁹³ Interview with Dr. Hailu Araya, Unity for Justice and Democracy, interview conducted on 10th of April 2011.

²⁹⁴ Interview with Dr. Merara Gudina, president of the Oromo People's Congress, interview conducted on 10th of April 2011.

²⁹⁵ Interview with Professor Beyene Petros, President of the Ethiopian Social Democratic Party, interview conducted on 28th of April 2011.

²⁹⁶ See for example, Section 3 of the political program of ESDP, articles 20 (11(3)) and 20(11(9)) of the by-Law of AEUP Party. In addition to these, in the EDP Party, the previous seven departments are raised in to nine; one of the new departments is the Social Department the mandate of which is to follow up the realization of the socio-economic needs of PWDs.

desires of these people may not be saved by the economically less strong political parties. Accordingly it should not be surprising if these people are reluctant to join these parties which are not in a position to reach for their immediate needs. Still others question the general political attitude as a principal ground for the inconspicuousness of PWDs in the opposition parties. They argue that in the current reality, it is hard to become a member of the opposition party and it is difficult for PWDs to afford the negative consequences of their membership. Accordingly, they prefer to stand apart from the political movements of these parties.

Generally, the above situational analyses are clear indications of the practical defectiveness and pragmatic challenges for the intangibility of PWDs as active members of the different political parties in the country. With this reality, one cannot be confidential as to the representativeness of these parties. That is why such bad experience of the political parties in attracting PWDs has become one major factor for the marginalization of these people in the law- making bodies of the country at different level.

5.6 Conclusion

In this chapter, the author has tried to examine the participation spectrum for PWDs in the electoral experience of the country in the past twenty years. Accordingly, the factual findings and statistical indications proved the fact that, in the past four elections; the voting procedures, electoral campaigns and political party compassions have taken place with total disregard of PWDs which covers the appreciable number of the total population of the country.

The participation spectrum in the voting proceedings so far has been too much insignificant. These groups of people were not exercising their right to vote. This historical disfranchisement is directly associated with the societal, institutional, technical and infrastructural barriers. The general attitude towards disability is influencing these people to feel as if they are not competent to have a vote for their representatives.

PWDs were not the primary concerns of the Government and the National Election Board and the different political parties. The organs disregard these people while adjusting polling stations, in facilitating information and awareness raising programs and in providing disability convenient voting formats and attractive treatments.

The same difficulties have been faced by PWDs in exercising their right to stand for elections. Accordingly, they had no significant “say” both at the federal and regional law making bodies. This can be realized from the exclusion of these people in the two federal houses, the four regional state councils, and the other two city councils which have been operating in the past four electoral terms. Different challenges are suggested as difficult barriers that hinder the courage and capacity of PWDs not to contest for elections and to have access for a seat in these highest authoritative organs of the government. The attitudinal, the financial constraints, the absence of disability specific election law, the low tendency of participation as members of political parties and the general fear of the political game are suggested as the root causes for their exclusion in the legislature.

Even though effective political participation through the shelter of different political parties is believed to be an essential strategy of increasing the political role of PWDs in the country, what is seen in the reality is to the contrary. These people were not the primary targets of both the ruling party and the opposing political parties. This can be realized from the absence of attractive incentives and effective strategies in the by- Laws and programs of the parties that could give recognition and confidence for these people as if they can be the principal actors of the peaceful political struggle in the country. On this regard, much was expected from the ruling party EPRDF as it is the largest party in the country and with absolute dominancy both at the federal and regional legislatures. In addition to this, all the financial and the lower democratic understanding of politics and political participation as well as the fear of its bad consequences are hindering these people not to have an active role in the daily lives of the parties.

Generally, the findings shows that, in the past four elections conducted in the country, PWDs were not enjoying their voting rights. Their access to stand for elections and the entree to become members of political parties were rights simply jotted in papers without having practical meaning on the ground.

Chapter Six

Conclusion and Recommendations

6.1 Conclusion

Currently more than 650 million PWDs are presumed as residents in every corner of the globe. Out of this number, the lion's share is claimed to be found in the third world countries to which Ethiopia is figured as one of them. Be that as it may, when we think of the reality that the country has been a victim of natural and manmade calamities, which are the principal causes of disability of different types, one can easily conclude that the country is a home for considerable number of PWDs.

Unfortunately, the country does not have well researched and comprehensive data that can brief the status of these people. This can be discerned from the inconsistent and dissimilar assumptions forwarded by different stakeholders like the National Census Commission, different NGO's and international organizations. Undoubtedly, this is a big challenge for the country in the policy making and decision procedures alike mainly on disability specific issues and the involvement of these people in the political, economic, social and national affairs of the country.

That is why this paper picks out the political mainstream mainly of the electoral participation of PWDs and tries to examine the major -challenges faced by these people. The difficulties are examined focusing on the exercising of their right to vote, their access to run for elections and the trend of attracting these people in the political struggles of different political parties. Accordingly, throughout the paper, four fundamental issues are touched up on.

First of all, the paper tried to examine the conceptual and attitudinal perceptions and the progress that the international community experienced about disability and PWDs over the past twenty years. In this ambit, attitudinal changes have been witnessed from those of the earlier medical and charity approaches to the current perceptions of social and human rights understandings to disability issues. Therefore, in the first decade of the 21st century, disability is no more a medical and charity issue. But it has staged to a human right agenda. PWDs are no more objects but subjects of all the rights they have as a human being equally with the non- disabled.

When one comes to the situation in Ethiopia, the attitudinal problems are yet persistent. The society is not still confident on the capacity of PWDs and valuable roles that could be played by these people. This is what the practical reality witnessed in the political and electoral tournaments that took place in the recent history of the country. There was absolute marginalization of PWDs in the overall electoral processes either for voting or to run for elections privately or as members of the existing political parties.

As a second realm of the paper, in order to critically examine the extent of the disfranchisement, the author found it necessary to come up with a brief conceptual understanding of politics and the traditional manifestations of the right to political participation. Hence, introductory ideas are raised to elaborate what these rights mean to PWDs. With this objective, the author stressed that, a simple declaration of the right to vote, the right to be elected or the right to have access to political parties for “every citizen” may not guarantee the practical exercising of these rights by PWDs. Without having special accommodative measures and incentives which may attract the involvement of these people in the political arena, they can’t be beneficiaries of the generally stipulated recognitions to the rights. Therefore, the contents and the scope of application of the rights are required to be revisited in the sense they can be meaningful to respond to the practical needs of these people.

Then, the third point comes in to picture. On one hand, we are saying that there is a conceptual and perceptual progress in approaching disability and the rights of PWDs. Again, we are arguing that ensuring electoral participation for these people does not mean a mere declaration of the rights in general terms to every citizen. Therefore, the essential task will be of evaluating the legal frameworks that give recognition to the right to political participation and its various elements and how the instruments approached the specific needs of these people. These instruments range from those of internationally (at the UN system) and regionally (in the African system) functioning human rights documents to those of the national legislations with a special attention to the FDRE constitution and the various election laws which are currently having a binding effect.

With regard to the international and regional instruments, it has to be noted that Ethiopia is signatory to these documents and they have got constitutional recognition as parts of the laws of the land up on ratification. When we look at the contents of these instrument with a specific

focus on the provisions which recognize the right to political or electoral participation and related instrumental rights, they can be categorized in one of the following characters:

- Most of the instruments did not expressly recognize the right to electoral participation specifically to PWDs. They are framed in the general terminology with the notion of the right to “every citizen”. However, they do have provisions recognizing the golden principles of non- discrimination, equality, dignity and recognition of the person which are the central elements in justifying the rights of these people. Even though these specific provisions do not expressly condemn “disability” oriented violation of these principles, the terms like “*other status, of any kind*” and may serve as an effective way to contextualize and interpret the instruments in to a disability friendly version.
- Few of the instruments have provision with a view of excluding persons with mental disabilities and psycho- social problems from exercising their electoral rights. This can be inferred from the interpretation of the UN Human Rights Committee, General Comment on art. 25. Beyond this, the National Election Law of Ethiopia and its implementing directives incorporate restrictive provisions against the rights of these people. The author believes that these instruments and understandings are against the emerging perceptions towards these groups of people and they are backed by irrationally presumed fears.
- In the recent and the first binding human rights convention on the rights of PWDs, I.e. The CRPD, the most innovative ideas and expressly dictated rights are recognized. The provisions are designed with the view of ensuring the political participation in general and electoral involvement in particular of PWDs.

Generally, the paper tries to justify the electoral rights of PWDs from the conceptual or philosophical, the political and the legal perspectives.

Having all these points in mind, the legal and the practical assessment of the situation of PWDs with special focus on their political participation in the electoral processes of the country can be summarized as follows as principal findings of the paper.

- ✓ There is no disability specific data recording experience in the country. At the national level, the exact number of the total population living with disabilities is controversial and

there is no uniform data. The absence of such accurate information is creating difficulty while approaching the various disability issues to come up with an accurate background in different policies and programs of the overall affairs of the country.

- ✓ More specific to the political affairs of these people and the extent of their participation in the last electoral proceedings, the National Election Board does not have any recorded data. At this moment, the Board cannot describe as to how many PWDs have been participating as voters, as candidates for election or as observes. This is a clear indication of the disregard of these people by the Board. Political parties do not have a custom of recording members of their party who are living with disabilities. While they have different formats of registration of their members like based on age and sex, PWDs are not in the mind setup of these parties. Due to this, political parties do not know exactly of the status of these people in their composition. This has an implication of the total disregard of these people not to become the principal targets of political parties. Hence, the tendency of inviting them in the party membership is uncommon.
- ✓ There is no disability specific Election Law in the country. Even some of the provisions which specifically use the term “disability” are more of restrictive. Accordingly, persons living with mental disabilities are declared incapable to vote and to be elected. Despite their conceptual irrationality, the provisions are not clear on some practical questions like: how is the mental incapacity to be proved in the country where there is one hospital relatively competent to address the disorder? Against whom burden of proof is imposed on? When is the exact time of proving this fact? During registration? During election? Or after election and other unsolved issues are still in the gray area. This difficulty has made the practical applicability of the provisions in the hands of election coordinators.

Generally the absence of disability specific election law is accelerating the disfranchisement of PWDs in the country’s election tournaments. In order to interpret the existing general election laws in the context of their importance to PWDs, it requires well informed, trained and fully awarded election coordinators. There has to be common societal understandings. However, these values are not practically becoming meaningful in the reality. As a result of these difficulties, the existing generally framed election laws are not ensuring the rights of PWDs in the exercise of their electoral participation.

- ✓ Coming to the practical inconveniences, PWDs are not exercising their voting rights for different reasons. The difficulty begins from the attitude of the society towards these people which is influencing them to segregate themselves from the public decision making programs. Most of them developed a feeling as if they are not competent to vote.
- ✓ For those who survived the attitudinal barriers and committed themselves to exercise their right to vote, they are required to pass through other practical challenges. They are not enabled to make an informed decision since campaigns and policy programs of candidates are not disseminated in the ways understandable to these people. The physical and instrumental barriers in the polling stations are discouraging. There are no voting materials and technical devices that these people can use easily in voting. Generally, in the past four elections conducted in the country, there were no attractive, plain and convenient electoral proceedings that could simplify the burden of these people in exercising their voting right.
- ✓ Even the situation seems extremely difficult for PWDs while exercising their right to stand for elections. The practical challenges of these people mainly attributed to the general attitude of the public and lack of confidence and trust on the competency of these people. This is the result of a misleading perception that leadership and political representation is a job only for those who are physically able bodied. In addition to this, the general fear of politics and its bad consequences have also its own contribution. The financial incapacities and a very limited experience of these people in the political struggle by joining to political parties and related impediments are further recognized as the major causes for the total disfranchisement of these people at the legislative in different level.
- ✓ Finally, the paper tries to scrutinize and comes up with a finding that the active engagement of PWDs as members of the existing political parties is insignificant. These people are not the primary targets of the parties and their invitations to membership. They don't have disability specific targeted attractions and incentives in their by- laws. Here also the same factors are involved as practical challenges affecting the right to have access to political parties for PWDs. For most of opposition parties, their economical incapacity to afford the urgent needs of PWDs is

invoked as a major cause for their reluctance to invite PWDs. For the leading party EPRDF, even though there are no disability specific incentives and attractive mechanism, it is the lack of interest of PWDs themselves as a major factor for their limited participation.

Whatever the justifications of each side may be, everybody admits the fact that PWDs have an indeterminate role in the day to day activities of the parties that are actively functioning in the country. This situation has contributed a lot not to have access for candidacy. Therefore, taking into consideration of all the above findings, the author suggests some of the plausible measures in the next section with a view of alleviating the existing problems that are affecting the political and electoral active involvement of PWDs.

6.2 Recommendations

The author perfected to jot down his recommendations with specific reference to the primary responsible stakeholders for the better implementation of the suggestions reflected. Accordingly, the proposed ideas are classified in to those that should be done at the national government, the National Election Board, political parties and by PWDs. In addition to this, some of the propositions may not be settled and accomplished over night and may require long term and rigorous efforts while most of them needs an urgent reaction from the responsible organs.

6.2.1 Measures that should be taken at the National Government Level

1. As a first and the most principal step, the country needs to have accurate and precisely researched statistical data that can best prescribe the numerical status of PWDs in the country. This can serve as an input and baseline in the future policies, laws and administrative decisions having a direct impact on the political life of these people.
2. Extensive awareness raising programs should be designed and implemented in order to change the attitudinal problems of the public against disability and persons with disabilities. This can be done by Governmental and Non Governmental actors at different level. To this end, the government is expected to avoid all legislative, administrative and bureaucratic restrictions imposed on NGOs, Associations of PWDs and other concerned bodies that are working on disability issues. The work of those organs should not be limited to charity and the provision of humanitarian assistance. The government has to invite religious institutions,

social entities like *edir*, *ekub* and other cultural collections to introduce disability issues as part of their daily activities. State and private media and press are required to give a wider coverage and should be effectively utilized to promote the roles that could be played by PWDs in the political environment of the country if they are given access to participate. Identifying and disclosing of the practical challenges of PWDs in the exercising of their electoral rights should be the daily task of the media. These efforts may create lobbying influences and pressure on the responsible organs to react in handling the problems.

3. The National Educational Curriculum has to be revisited and it should be designed in the way more inclusive to PWDs. The special need educational programs should be delivered in accessible places to these people. This is a fundamental incident of capacitating PWDs with the necessary knowledge, skill and experiences that are essential for their effective participation. If they are equipped with these values, they can easily challenge the other procedural inconveniences. They can be economically fit and can afford the cost of politics. Therefore, if they can communicate easily, if they become literate and have got alternative means of generating income, their participation will not be dependent on the will and the finance of others. Therefore, facilitating academic access for these people is a pillar of increasing their capacity, competence and confidence to compete with others and to win the battle. This is in fact a long term effort that the country has to realize progressively.

When we come to the pressing measures that the country has to go forward as soon as possible, the author recommended the various alternatives which include the following points:

4. The country need to enact disability specific national election law. This is the primary task that the country has to comply. On one hand, as a party to the CRPD, a national legislation is required for better implementation of the innovative ideas stipulated in the convention on what is to mean by the right to political and electoral participation for PWDs. Plus to this, the existing election laws which are framed in the general context to “every citizen” are not ensuring the practical exerting of the right by these people. This legislation can specify the primary duties of all responsible organs and it can prescribe the details of electoral rights in the context of the special needs of PWDs. In addition to these values, the instrument may serve as a basic tool of sensitizing the public, election coordinators and PWDs themselves on the accommodative measures that should be taken in the pre, during and post election

periods. It is not new for the country to enact disability specific legislation as it can be appreciating from the recent proclamation no. 568/2008 which was proclaimed with a view of settling the labor related affairs of PWDs. The proclamation was enacted while there are general legislations regulating the labor relations. This is a clear message of the fact that generally declared laws may not effectively address the special concerns of PWDs.

5. Until the success of having a National Disability Election Law, urgent consideration of the existing laws should be of an immediate step. Amendment should be made to the laws that restrict the voting rights of persons with mental disabilities and the country has to recognize the presumed capacity of these people. The existing provisions are mere reflections of the earlier and outdated approaches to disability. On top of this fact, the practical implementation of these provisions is not clear and they are serving as pretexts for abusive decisions made by election coordinators to deny the voting rights of these people.
6. The other alternative that the country has to introduce is what we call the “Quota system”. This can be effected by making reference to article 54(3) of the FDRE constitution which allows special representation of minority nationalities and peoples. A wider interpretation of the phrase, “..... *Special representation of minority peoples*” may serve as a leeway to introduce this system in the composition of the legislature. In addition to this, currently the total seat of the House of Peoples Representatives is 547 while the Constitution allows the members up to 550. Therefore, at least it could be a great advancement if there are three PWDs as special representatives in the parliament. Introducing this system is important in many ways. For one thing, these people will have a direct “say” in the national policy and decision making dialogues. On the other hand, having these people in the parliament can reflect a good impression to the general public that PWDs are able to play a role in the politics if they are offered the opportunity. It can serve as a sample of showing the competency of these people in the political arena if they are given access to participate. Most importantly, these people could serve as a bridge in the move towards a better inclusion of disability agendas as one of the country’s general affairs. The same approaches may be adapted in the other legislative organs if there is political will and commitment. This is what other countries like Uganda and South Africa are experiencing well.
7. The other innovative option is the provision of a special funding to political parties with a better composition of PWDs and that nominate these people to contest in elections

representing the party. This was the strategy that has been employed during the fourth term election period with a view of motivating women's participation in the parties. If the same approach is implemented with a specific condition of the number of PWDs actively involving in each party, it can charmingly forward an impressing message to the parties to pay special attention to these people. Moreover, it can minimize the financial constraint of PWDs in their candidacy.

8. On the other hand, the financial and human capacity of the National Election Board needs to be improved. It is this constraint which is repeatedly invoked by the Board for its failure to provide disability specific assistances, awareness raising and voter education programs during elections. Therefore, increasing the budget and man power of this organ may create additional capacity to provide better services and convenient electoral environment for these persons.

6.2.2 Commitments to be discharged by the National Election Board.

This organ is required to employ the following alternatives before, during and after elections are conducted; so that PWDs can exercise their electoral rights without complication:

1. First of all, awareness raising and voter education programs should be broadcasted by the means that can reach to these people. Accordingly Braille language, sign language, audio visual and figurative notifications and other means of communications can help a lot for these people for their desire of making informed decisions. Related to this, the national election laws and other relevant instruments should be translated in to these versions. Generally, work has to be done with a view of enabling these people to make an informed consent for their vote.
2. The Board is required to develop disability specific registration format. This enables the Board and the Government at large to evaluate the electoral services they are rendering to these people and as back ground information for the future works of improving the measures for the better treatment of PWDs. This statistical information may also forward an encouraging impression to these people as if they are one of the concerns of the Board
3. Consecutive and intensive trainings should be designed to acquaint election authorities and coordinators with the emerging international standards on electoral rights of PWDs. The Board has to introduce its coordinators the specific strategies that can best

enfranchise voters with different type of disabilities. This can be done through the adjustment of links with experts on disability and electoral access and disability organizations and associations. If there are well informed and fully mindful electoral authorities, they can minimize the inconveniences that PWDs are facing throughout the electoral process.

4. The Board and its authorities at different level are expected to give proper attention for PWDs while selecting polling stations. Therefore, the issue of polling place accessibility should be the primary concern of this organ. Accordingly, the site and strategies are required to be inclusive and that promotes and attracts the full and equal participation of PWDs in voting.
5. Adjusting experience sharing with countries having a better experience of accommodating special measures for PWDs during elections may enhance the capacity of the Board in advancing its disability focused tasks one step forward.
6. It can serve as an effective strategy of reducing communication barriers with PWDs if the Board invites persons with disabilities of various type as coordinators and supervisors or observers of election proceedings. For one thing, they can easily understand and treat voters with disabilities. Most importantly, it may lead to a change in public attitude about the rights and abilities of PWDs and their capacity of playing a positive role in shaping a democratic society. For these reasons, the Board has to think over the composition of the monitoring team in the polling stations and it has to invite these people to become actors in the election process. This is what Ghana is experiencing as an effective strategy. In addition to this, not only individual PWDs, even their association should be invited as observes.

6.2.3 Measures that Require the Special Attention of Political Parties

Whatever the effectiveness of different political parties in the country's political struggle may be, the author strongly would argue that membership in different political parties can ease the difficulties of PWDS in their political movement. Therefore:-

1. Political parties are called for to reconsider their targets for membership. PWDs should be one principal corner of these organs. This should not be only in the social affairs policy programs on how to provide charity and care for those people. But the

primary objective should be attracting and inviting them to become active role players in their political struggle. Parties are required to adopt special incentives and encouraging strategies on how to include these people as active participants in their political movement. The by-laws of the parties may serve as effective tools in describing the possible measures. They need to adapt the custom of capacitating, integrating and nominating PWDs to stand for elections representing their party.

2. Like all the other stake holders, political parties are also required to reconsider the documentation of the profile and status of PWDs in their composition. Similar to other specifications like the youth and women total number of members, they need to have a format briefing the total number of PWDs who are actively participating in the party. This can give a special impression to the general public and it can have a better implication on the future affirmative measures in the works of the party.

In addition to this, the statistical information will be of important for the better implementation of the “special funding” approach which the author suggested above.

6.2.4 Attitudinal Qualities expected from the Society at large and from PWDs themselves.

Despite all the above measures that are required to be settled by different responsible organs at different level, it is the society and its attitudinal change that can bring the ultimate goal. The stimulus for a change in the psychological perception of the community about disability might come from different actors. Then, the society is expected to be an active recipient of these perceptual changes on disability. Thanks to globalization and information technology, the society has an exposure to update itself with the emerging concepts on disability. What is required is commitment, open mindedness and readiness to question those cultural, traditional and some religious misunderstandings on disability and PWDs. It is a time for the public to have confidence and trust on the capacity of these people and their role in the political and other affairs of the country.

Together with this, PWDs have to bring themselves in the political struggle. It is their interest which is a determinant factor for the success of their political aspirations. They have to use the existing limited opportunities to acquaint themselves with the necessary knowledge, skill and experience which are the best qualities to succeed in the field of democratic and peaceful

political struggle. It is the exact time for these people to analyze the fundamental notion of “Nothing about Us without Us!” as principal slogan in their daily life.

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ANNEXES

Annex I: - Interview Questions Prepared for the National Election Board Officials

As it is recognized in most of the international, regional and national legislative norms including the FDRE constitution, every citizen have the right to enjoy political rights on equal basis, then.

1. To what extent persons with disabilities are enjoying their right to vote?
2. How about their right to stand for elections?
3. It there any statistical research conducted by the Board that shows the extent of their participation in the last four election periods?
4. Are the voting procedures, facilities and materials accessible to persons with disabilities?
Have you ever prepared accessible information to these people?
 - In the form of Braille
 - augmentative (enhancive information)
 - Awareness creating and voter educational programs in sign languages, symbols and other forms of communication. Because, these are the mandates that the Board is supposed to work on as per article 89 the national election law of the country.
5. Were there any trainings and awareness raising programs for election officials and observers on how they have to treat and assist PWD during registration and election?
6. What are your criteria where adjusting places as polling stations? Is there a tendency of allocating places taking in to account the convenient of the places for PWDs?
7. Don't you think that the country needs disability specific and accommodative election law that could best implement the constitutionally guaranteed political rights of these people? Mainly of their voting right?
8. It is also the duty of the Board to identify areas that require amendment and submit same to the concerned body according to article 7(8) of the national election law of Ethiopia. Accordingly, is there any work of the Board on this task? What the board would suggest for example in the move forwards the amendment of provisions that restrict the voting rights of persons with mental disabilities?

9. How the Board is practically implementing these provisions? What standard or evidence the Board is applying for restricting this right against PWDs? Up on whom the burden of proof is imposed on?
10. Are there Programs that the Board is working on to minimize the current marginalization of these persons?
11. Are there relevant statistics and data available concerning the number of PWDs participated in the past voting proceedings? How are you evaluating the situation and the level of their participation in the past electoral procedures?
12. What is the Board doing to redress the existing problems of PWDs to enable them to take part in these kinds of public responsibilities in the future elections to be conducted the country?
13. Was there the experience of the Board inviting PWDs and their associations to observe elections?

Annex II: - Interview Questions Proposed for selected political parties

It is highly recommended that if PWDs actively participate as members of political parties of their choice, they could challenge all the financial, attitudinal, physical, informational as well as bureaucratic barriers that might impede their aspirations to stand for elections. With this objective in mind:-

1. How many members does the party have?
2. Are there PWDs actively participating in the party as members?
3. Was there an occasion where by a person with disability stand for election and won a seat either at the regional or federal parliaments representing your party?
4. Are there incentives and accommodative measures in the by-laws of the party that could attract these people and get motivation for their active involvement?
5. What possible programs you are planning in the future to make your party more open for these people?
6. What possible measures would you suggest that should be taken at the national level by the government to assure the electoral rights of these people and have a practical meaning?
7. Are there discriminatory laws and practices of the party in decision making and while nominating a person as a candidate representing the party for election that may affect the opportunities of these people to contest for elections?

Annex III: - Interview Questions for selected PWDs

1. How is your political participation either as a voter, candidate and /or as a member of a political party?
2. What barriers and difficulties are challenging your participation and movement for:
 - a. Exercising your right to vote?
 - b. Complaining for election?
 - c. Becoming a member of a political party of your choice?
3. How you ever been invited by:-
 - a. Political parties to become a member?
 - b. Election Board either to observe elections or to serve as an election official?
 - c. By the responsible governmental organ or policy makers to forward your opinion in certain policy debate that may affect the lives of PWDs?
4. What do you think are the causes for these difficulties?
5. What possible solutions and measures would you suggest?
6. Who do you think should take the lion's share duty for effective implementation of the measures? And how should be the measures taken by:
 - The government?
 - PWDs themselves?
 - The society/
 - Political parties?
 - The National Electro Board?

ANNEX IV: - Interview Questions Proposed to the Officials of the Federal and State Parliaments and City Councils.

1. How many seats are structured in the house?
2. Were there PWDs as elected members of the house in the past four elections?
 - a. In the first round...
 - b. In the second round...
 - c. In the third round...
 - d. In the fourth round...

ANNEX V: - List of Interviewed Persons

- W/ro Birhane Daba, President of Association of Ethiopian Women with Disabilities
- w/ro Yeshe Fekade, Public Relations Director , Ethiopian National Election Board
- Ato Kasahun Yibeltal, former President of Federation of Associations of Persons with Disabilities (currently serving as a Consultant of the Federation)
- Ato Atsibiha Aregawi, Member at the HPR and Chairman of the Standing Committee on City Infrastructure and Construction Affairs
- Ato Ayele Giduma, Member at the HPR and the Social Affairs Standing Committee
- Ato Gebre Addisu, Public Relations Director, Association of Persons with Visual Impairment
- Ato Solomon Tadesse, HPR Member and Officer at the Social Affairs Standing Committee
- Ato Addis Legesse, Director of Legal Affairs and Lecturer at the Law School, Wollo University
- Ato Gebre Alemayehu, the House of the Federation Communication Affairs Officer
- Ato Kahsay Aregawi, Communication and Public relations Directorate Director, Tigray National Regional State Council,
- Ato Merkebe Fente, Public Relations Directorate Director, Amhara National Regional State Council
- Ato Negash Tolla, Communication Affairs Senior Expert, Office of the Speaker and the Secretariat of the '*caffee*' of the National Regional State of Oromia
- Ato Zewdu Dessie , Minutes and Documentation Officer, SNNP National Regional State Council
- Ato Hailu Kassaye, Public Relations Officer, at the SNNP House of Federation
- Ato Kassahun Dingetu, Data base and Information Officer, Addis Ababa City Council, Office of the Speaker
- Ato Girma w/yohannes, Member of the City Council of Dire Dawa,
- Ato Yakob Like, Vice President of All Ethiopians Unity Party
- Ato Sasahulih Kebede, Secretary General, Coalition for Unity and Democracy Party
- Ato Ermias Balkaw, Member of the Central Committee, Ethiopian Democratic Party
- Dr. Hailu Araya, Research and Publication Vice President, Unity for Justice and Democracy
- Dr. Merara Gudina, president of the Oromo People's Congress
- Professor Beyene Petros, president of the Ethiopian Social Democratic Party, interview conducted on 28th of April 2011

