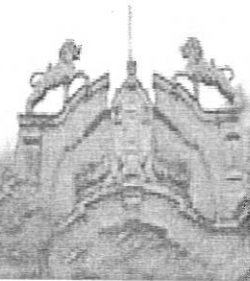


Addis Ababa
University

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**Legislative Measures for Effective Implementation of CRPD in Ethiopia: A
critical assessment**

**Submitted in partial fulfillment of requirement for Masters Degree in Law
(LLM), Addis Ababa University, School of Law LLM Programme**

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Legislative Measures for Effective Implementation of CRPD in Ethiopia: A critical assessment.


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Contents

Prologue	iv
Plagiarism Declaration.....	v
Acknowledgments.....	vi
Abstract.....	vii
Acronyms.....	viii
Chapter One	1
1. Background.....	1
2. Literature review.....	2
3. Statement of the problem.....	2
4. Research questions.....	3
5. Scope of the study.....	3
6. Methodology.....	4
7. Limitation of the study.....	4
8. Significance of the Research.....	4
9. Objective of the study.....	5
a. General objective.....	5
b. Specific objectives.....	5
10. Organization of the study.....	5
11. Terminology.....	6
Chapter Two.....	7
Some General issues under the CRPD.....	7
Introduction.....	7
2.1 Brief History of the Convention	7
2.2 Models of Disability and How They Shape the Global Response.....	13
i. Charity Model.....	13
ii. Medical Model.....	15
iii. Social Model.....	19

- iv. Citizenship Model..... 26
- v. Bio-psycho-social Model..... 28
- 2.3 General Obligations Arising from the CRPD 31
- 2.4 Conclusion 37
- Chapter Three..... 40
- Conflicting Laws with the CRPD 40
- Introduction..... 40
- 3.1 Abolish/ Repeal Existing Legislation 40
 - a) Approach Followed by the FDRE Constitution..... 43
 - b) The Right to Life/non-discrimination (art.551 of the criminal code) 44
 - c) Legal capacity 46
 - i. The Right to be Elected and Voting (Political participation)..... 49
 - ii. Marriage 51
 - iii. Standing Trial (the right to sue or be sued) 52
 - iv. Other Juridical acts 54
 - d) Negative Terminologies..... 55
 - e) The charity and Society proclamation and Disability Rights 56
 - f) Labor Law/Employment 58
- 3.2 Conclusion 59
- Chapter four 61
- Gaps (overlooked issues) in some laws 61
- Introduction..... 61
- 4.1 Reasonable Accommodation..... 61
 - 4.1.1 The Right to Employment/work and Reasonable Accommodation 63
 - 4.1.2 Education and Reasonable Accommodation 66
- 4.2 Denial of Reasonable Accommodation as Discrimination 67
 - 4.2.1 Variation of Treatment to Ascertain Equality 70
 - 4.2.2 Counter Arguments..... 74
- 4.3 Legislation on Accessibility 77
 - a) Access to Health Services 78
 - b) Access to Education 80

c) Access to Buildings.....	84
d) Access to Transportation.....	86
e) Access to Justice.....	88
f) Access to Mass Media and ICT.....	94
4.3 Budgeting	99
4.4 The Role of National Human Rights Institutions (NHRIs).....	100
4.5 Conclusion.....	102
Chapter Five.....	104
Conclusions and Recommendations	104
5.1 Conclusions	104
5.2 Recommendations	113
Bibliography	116

Prologue

Every now and then, a simple yet radical idea shakes the very foundations of knowledge. The startling discovery that the world was not flat challenged and ultimately changed the way people perceived themselves and their relationships with the world. To date this change of knowledge is too accelerated. But we Ethiopians could not cop up ourselves with this change.

I always wonder why we are best at bad things and worst at good things. I do believe any community's civilization is judged by its commitment and system it has to handle the diversity in it. One of the differences in every community is the issue of persons with disabilities. It is true in our society. I have witnessed that most, if not all, buildings in Addis Ababa University are not accessible to persons with physical disabilities. How could we expect, if institutions like Addis Ababa University do not have the commitment to address this issue, the community at large would treat the diversity appropriately.

More surprisingly my best friends, both practitioners and academicians, discouraged me while conducting this research with a view that the issue of persons with disabilities is insignificant.

I, however, hope that, despite it takes too long time to bring changes; persons with disabilities in Ethiopia will be part of the community in every movement it takes.

Plagiarism Declaration

I declare, to the best of my knowledge and belief, that this thesis is entirely my own original work and has not been taken from the work of others, saves and to the extent that such work has been cited and properly acknowledged. I understand that plagiarism is a grave and serious offence in the university and accept the penalties that would be imposed should I engage in it. Direct quotations from books, journal articles, internet sources, reports, commentaries or any other source whatsoever are acknowledged and the source cited are identified in the thesis references.

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Abstract

It is self-evident that Persons with disabilities remain amongst the most marginalized in every society. Regardless of a country's human rights or economic situation, they are generally the last in line to have their human rights respected.

WHO /World Bank World report on disability of 2011 estimates that over one billion persons – meaning approximately 15 per cent of the world's total population – suffer from some type of disability. Over two thirds of them live in developing countries. Not being an exception to this fact, significant number of persons with disabilities found in Ethiopia.

Since other international human rights instruments have not protected adequately the rights of persons with disabilities there was a need to have a specific convention tailored for persons with disabilities. The principal arguments for a disability-specific convention are to make it visible, specific, effective, and comprehensive and to assure equality.

Models of disability provide a perspective on the rationale for the policies and programs developed for, with, and by people with disabilities. Similar to other international human rights instruments, article 4 of the CRPD makes specific reference to the obligation of States parties to adopt legislative measures as a matter of general obligation.

Taking legislative measures is one of the most significant forward steps for the realization of rights of persons with disability. Among these adopting legislative measures abolishing any laws which are directly in conflict with the rights of persons with disabilities is the prior measure.

In this regard this research finds that Ethiopia has various laws (civil code, criminal code, labour law, and charity proclamation, laws on accessibility of education, health, buildings, transport, justice and mass media and information technology) that need to be repealed since these laws are incompatible with the CRPD.

Like other antidiscrimination laws failure to provide reasonable accommodation amounts to discrimination. Provision of reasonable accommodation is not a special favor to persons with disabilities rather it is a means to give an equal opportunity so that they can exercise their rights.

Acronyms

CEDAW	Convention on the Elimination of all Kinds of Discrimination against the Women
CSOs	Civil Society Organizations
DPOs	Disabled People Organizations
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
OHCHR	Office of the High Commissioner for Human Rights
PWDs	Persons with disabilities
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UDHR	Universal Declaration on Human Rights
WHO	World Health Organization
ILO	International Labour Organization
NHRIs	National Human Rights Institutions
WPA	World Programme of Action Concerning Disabled Persons
ACHPR	The African Charter on Human and Peoples' Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
EU	European Union
AHC	Ad Hoc Committee
CRC	Convention on Rights of the child/Committee on Rights of the Child
CBR	Community-based Rehabilitation
ICF	International Classification of Functioning
NGOs	Non-governmental Organizations
NAP	National Action Plan
CSP	Charities and Societies Proclamation
PASDEP	A Plan for Accelerated and Sustained Development to End Poverty
GTP	Growth and transformation plan
ICT	Information and Communications Technology
ETV	Ethiopian Television

Chapter One

1. Background

It is self-evident that Persons with disabilities remain amongst the most marginalized in every society. While the international human rights framework has changed lives everywhere, persons with disabilities have not reaped the same benefits. Regardless of a country's human rights or economic situation, they are generally the last in line to have their human rights respected. Being denied the opportunities that would enable them to be self-sufficient, most persons with disabilities resort to the kindness or charity of others. WHO /World Bank World report on disability of 2011 estimates that over 1 billion persons – meaning approximately 15 per cent of the world's total population – suffer from some type of disability. The global disability prevalence is higher than previous WHO /World Bank estimates, which date from the 1970s and suggested a figure of around 10%. In the years ahead, disability will be an even greater concern because its prevalence is on the rise. This is due to ageing populations and the higher risk of disability in older people as well as the global increase in chronic health conditions such as diabetes, cardiovascular disease, cancer and mental health disorders, as well as improvements in the methodologies used to measure disability. Over two thirds of them live in developing countries. Not being an exception to this fact, significant number of persons with disabilities found in Ethiopia.

In recent years, there was a growing realization throughout the world that continuing to deny this much individuals their human rights was no longer acceptable. It was time to act. The Convention on the Rights of Persons with Disabilities is the response of the international community to the long history of discrimination, exclusion and dehumanization of persons with disabilities. It is historic and groundbreaking in many ways, being the fastest negotiated human rights treaty ever and the first of the twenty-first century.

Ethiopia has ratified the convention on July 7, 2010. Ratifying a treaty commits a country to implementing it. This may mean the country needs to modify existing laws, or abolish old laws, to be more consistent with the treaty. Despite little encouraging legislative measures are taken, specifically in the employment arena, there is still a too long way to go. There are quite good

number of laws contrary to the interests of persons with disabilities which should be repealed and equally, if not more, importantly legislations ought to be enacted compatible with the convention.

2. Literature review

The phenomenon of disability has got due attention recently at the global level. So it is obvious to expect rare literatures addressing the issue. Particularly it is hardly possible to find a work done in this area in the context of Ethiopia despite some. These very limited researches are mainly done for the purpose of fulfilling academic requirements and they are very specific in their scope. Furthermore these researches are done prior to the ratification of the convention on persons with disability (CRPD) by Ethiopia. For instance, Abdu Abdurazak has written on political representation;¹ while Shimeles Ashagre essayed on enforcement of employment rights.² Similarly Eshetu Alene has dedicated his work on persons with disabilities in higher education institutions.³ As a result the writer believes this research is the primary comprehensive work in this regard. Generally the academic literature has showed little effort to research out the legal frame work of disability in Ethiopia.

3. Statement of the problem

The Convention makes specific reference to the obligation of States parties to adopt legislative measures as a matter of general obligation: article 4 requires States parties “to adopt all appropriate legislative ... measures for the implementation of the rights recognized in the present Convention” and “to take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.”

In Ethiopia, a high percentage of the population lives with a disability due to history of conflict

¹Abdu Abdurazak; The need for the Political Representation of Persons with Disabilities in Ethiopia; for Partial fulfillment of the requirements for the Degree of LLM (Human Rights and Democratization in Africa) of the University of Pretoria, 2011.

²Shimeles Ashagre ;The Enforcement of the Employment Rights of Persons with Disabilities in Ethiopia; in Partial fulfillment of the requirements for the Degree of masters of law (LLM), Addis Ababa University, 2009.

³Eshetu Alene; The Protection of Human Rights of Persons with Disabilities in Higher Education Institutions of Ethiopia; in Partial fulfillment of the requirements for the Degree of masters of law (LLM), Addis Ababa University, 2008.

and the resulting poverty. And yet, the country has only a very limited number of legal provisions addressing disability rights. When measured against the human rights proscriptions outlined in the Convention, it becomes clear that Ethiopia's current measures both fail to provide adequate protections for people with disabilities and actively discriminate against people with disabilities. The FDRE constitution only addresses the *allocation of resources to provide rehabilitation and assistance to the physically and mentally disabled* with a view of following both charity and medical models. One could not find any provision under the constitution which clearly addresses the rights of persons with disability. Currently, the country does not have any comprehensive enactment regarding with persons with disabilities. On the other hand there are plenty of provisions under the civil code, criminal code, labor proclamation, and other proclamations and regulations those are not compatible with the convention and have negative direct effects on persons with disabilities.

4. Research questions

- a) What are the existing laws that need to be repealed or modified? How these laws are incompatible with CRPD?
- b) Did the FDRE constitution recognize rights of persons with disabilities?
- c) Does Ethiopia have a legislation that addresses the issue of persons with disabilities comprehensively?
- d) What are the gaps in some proclamations with regard to persons with disability?

5. Scope of the study

The research targets at identifying the loopholes of legislative measures for the effective implementation of the CRPD in Ethiopia. That is to say the study is confined only assessing the content of enactments. This implies it does not give much emphasis to administrative and judicial measures even though these measures emanate from legislative enactments. Even under the legislative perspective the issue is very vast that makes the scope very wide. On top of this the research excludes the practical problems in enforcing rights of persons with disability. But it does not mean it is not mentioned totally. Rather it is discussed whenever necessary. More importantly significant consideration is given to the existing laws that have a paramount negative effect on the rights of persons with disabilities that need to be repealed because of their non

compatibility with the CRPD, non recognition of rights of persons with disabilities and absence of comprehensive enactment addressing the issue of persons with disabilities. And finally the research finds it is crucial to show the gaps in some laws (overlooked issues).

6. Methodology

The study primarily builds on regress critical assessment of legislative measures taken in Ethiopia for the effective implementation of rights accorded to persons of with disabilities under the CRPD.

Many primary sources, such as the CRPD, the constitution, civil code, criminal code, the labor proclamation and other related proclamations and regulations will be consulted. Books, journals, reports, internet sources and other relevant materials will be consulted as secondary sources.

7. Limitation of the study

Since the phenomenon has been given less attention both at national and international level, it is difficult to have an access of research works and literature as needed. More specifically it is hardly possible to get literatures in the domestic context. It is very tiresome to collect information. Even institutions working on disability are not cooperative. The second limitation might be identifying the very scattered provisions regarding persons with disabilities. The other problem is since the issues of persons with disability are premature and evolving there might be very contestable matters that are difficult to make consensus. And the last limitation is lack of experience by the researcher and shortage of time.

8. Significance of the Research

This study is significant in bringing to the fore the issue of persons with disabilities as a public agenda that needs a particular concern in the whole effort of realizing their all over rights in Ethiopia in general and in the legislative body in particular.

The finding of this research might serve as a reference or disability literature to courses relating the discourse. More over the research might serve as an input for similar in-depth researches in the country, would contribute to legislative revision and development.

Finally organizations working on disability might use it as a hand book for their activities.

9. Objective of the study

a. General objective

The general objective of this research is to critically assess the legislative measures taken by Ethiopia for the realization of rights of persons with disabilities.

b. Specific objectives

The specific objectives the research are the following;

- To portray that plenty of existing laws are not compatible with the CRPD,
- To show the need for a single comprehensive enactment addressing rights of persons with disabilities,
- To appraise the gaps in some laws which overlooked the issues of persons with disabilities,
- To examine the adverse effects of the new charities and societies proclamation in the implementation of rights persons with disabilities,

10. Organization of the study

The study is organized around five chapters. The first chapter determines the scope of the paper and sets out its objective and significance as well.

The second chapter gives a brief history of the CRPD and various models of disability. Furthermore it addresses the general obligations of states under the CRPD.

The third chapter deals with the conflicting provisions of some laws with the convention and the justifications for repealing legal provisions that are unfriendly to the issue of disability.

The fourth chapter shows the legislation gaps of some proclamations. The difference between the two chapters is the degree of compatibility with the CRPD.

Finally, the last chapter pertains to conclusions, findings and recommendations.

11. Terminology

The phrases “Persons with disability and people with disability” used in this work are similar with as indicated in the CPRD and are used interchangeably.

Chapter Two

Some General issues under the CRPD

Introduction

This chapter is dedicated to show human rights covenants do not address the issues of persons with disability and why the adoption of the CRPD is demanded as well as the process it has gone. In fact there were soft laws tailored to persons with disability adopted by the UN. But they were non-binding in one hand and non-comprehensive on the other hand.

The other important theme of this chapter is discussing the various models of disability and to indicate the more effective and appropriate models.

Finally, the natures of general obligation of contracting parties to the CRPD are dealt. In this section various types of categorization of state obligations are discussed.

2.1 Brief History of the Convention

The seven core legally enforceable human rights treaties implicitly protect persons with disabilities, but to varying degrees. Despite the general silence of these instruments on the issue of disability, the rights they confer are “universal” in nature. To invoke these protections, disabled persons must either fall under a universal provision or possess a separately protected characteristic in addition to his or her disability. As a result, in a 1993 report, a Special Rapporteur cautioned that in the absence of specific treaty protection, human rights abuses against the disabled would likely continue without redress.⁴

Prior to the CRPD there were, in contrast to hard law treaties that do not enumerate specific disability protections, a number of soft laws expressly provide for disabled individuals. These

⁴Leandro Despouy, *Report on Human Rights and Disabled Persons* paras. 280-81 (1993). Available at <<http://www.un.org/esa/socdev/enable/dispaperdes0.htm>> (last visited March 05, 2012). (Noting that “personswithdisabilities are going to find themselves in a legal disadvantage in relation to other vulnerable groups” because “unlike the other vulnerable groups, they do not have an international control body to provide them with particular and specific protection”).

include General Assembly designations of the International Year of the Disabled in 1981,⁵ Social Rehabilitation of the Physically Handicapped and the International Decade of Disabled Persons from 1982-1991.⁶ The United Nations has also passed resolutions such as the Declaration on the Rights of Mentally Retarded Persons,⁷ and the Declaration on the Rights of Disabled Persons.⁸ Additionally, the General Assembly adopted a World Programme of Action Concerning Disabled Persons (WPA) to encourage the development of national programs directed at achieving equality for people with disabilities.⁹ The World Programme of Action concerning Disabled Persons, which provides a policy framework aimed at promoting “effective measures for prevention of disability, rehabilitation and the realization of the goals of ‘full participation’ of [persons with disabilities] in social life and development, and of ‘equality.’”

Furthermore, The International Labour Organization has developed valuable and comprehensive instruments with respect to the work-related rights of persons with disabilities, including in particular Convention No. 159 (1983) concerning vocational rehabilitation and employment of persons with disabilities.¹⁰

Most significant among the soft laws are the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules),¹¹ the purpose of which is to ensure that all persons with disabilities “may exercise the same rights and obligations as others”. The drawback

⁵International Year of Disabled Persons, G.A. Res. 36/77, at 176, U.N. GAOR, 36th Sess., Supp. No. 77, U.N. Doc. A/RES/36/77 (Dec. 8, 1981).

⁶Implementation of the World Programme of Action Concerning Disabled Persons, G.A. Res. 37/53, at 186-87, para. 11, U.N. GAOR, 37th Sess., Supp. No. 53, U.N. Doc. A/RES/37/53 (Dec. 3, 1982).

⁷Declaration on the Rights of Mentally Retarded Persons, G.A. Res. 2856 (XXVI), at 93, U.N. GAOR, Supp. No. 29, U.N. Doc. A/8429 (Dec. 20, 1971).

⁸Declaration on the Rights of Disabled Persons, G.A. Res. 3447 (XXX), at 88, U.N. GAOR, Supp. No. 34, U.N. Doc. A/10034 (Dec. 9, 1975).

⁹World Programme of Action Concerning Disabled Persons, G.A. Res. 37/52, at 185, U.N. GAOR, 37th Sess., Supp. No. 51, U.N. Doc. A/RES/37/52 (Dec. 3, 1982) [hereinafter World Programme].

¹⁰See also Recommendation No. 99 (1955) concerning vocational rehabilitation of the disabled; ILO Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (No. 111); Recommendation No. 168 (1983) concerning vocational rehabilitation and employment of persons with disabilities; ILO Code of Practice on Managing Disability in the Workplace, 2001; Arthur O'Reilly, *The Right to Decent Work of Persons with Disabilities*, ILO Working Paper, Geneva, 2003 (Summary); ILO Technical Advisory Note on the Draft UN Convention on the Rights of Persons with Disabilities, January 2006.

¹¹Standard Rules on the Equalization of Opportunities for Persons With Disabilities, G.A. Res. 48/96, at 202, U.N. GAOR, 48th Sess, Supp. No. 49, U.N. Doc. A/RES/48/96 (Dec. 20, 1993) [hereinafter Standard Rules].

to these soft laws is that, as resolutions, they lack legally binding power.¹²

It is important to note that some more recent hard laws (international human rights instruments) have, however, addressed the issue specifically. They include the Convention on the Rights of the Child¹³; the African Charter on Human and Peoples' Rights¹⁴; and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.¹⁵

Setting this as a background, the primary disability-specific convention was first proposed in 1987, by Sweden¹⁶ and Italy.¹⁷ The idea, however, was opposed strongly.¹⁸ Sweden, however, did not give up and two years later, it again proposed the drafting of such an instrument.¹⁹ This too was rejected and, in 1993, the General Assembly decided to adopt the non-binding Standard Rules rather than a mandatory treaty.²⁰ Although the Despouy Report did not recommend the creation of a disability-specific convention, it drew attention to the inconsistency between the position of disabled people and that of other groups which did enjoy the benefit of thematic conventions.²¹

¹²See, e.g., The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS), U.N.C.H.R. Res. 1997/33, U.N. ESCOR, 53rd Sess., U.N. Doc. E/CN.4/1997/150 (Apr. 11, 1997); The Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care, G.A. Res. 46/119, at 188, U.N. GAOR, 46th Sess., Supp. No. 49, U.N. Doc. A/46/49 (Dec. 17, 1991).

¹³Convention on the Rights of the Child, G.A. Res. 44/25, at 166, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (Nov. 20, 1989) [hereinafter CRC].(art. 23)

¹⁴African (Banjul) Charter on Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986) (art. 18 (4)).

¹⁵Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" Adopted in San Salvador on November 17, 1988. (art. 18)

¹⁶U.N. Enable, Promoting the rights of Person with Disabilities - Human Rights and Persons with Disabilities, Part III.A. available at: <<http://un.org/esa/socdev/enable/rights/humanrights.htm>> (last visited March 02, 2012) (stating that the first initiative for a disability-specific international convention was suggested in the Global Meeting of Experts to Review the Implementation of the World Programme of Action concerning Disabled Persons in Stockholm, Sweden in 1987).

¹⁷Ibid.

¹⁸Ib. (Some States including the U.K. and Japan raised objections based on cost, while others including Germany and Norway considered that the existing conventions provided adequate protection).

¹⁹U.N. doc A/C.3/44/SR.16.

²⁰Leandro Despouy, Human Rights and Disabled Persons, in Human Rights Studies Series No. 6, U.N. Sales No. E.92.XIV.4 (1992), available at :<http://www.un.org/esa/socdiv/enable/dispaperdes5.htm> (last visited March 05, 2012).

²¹According to it: Persons with disabilities are going to find themselves at a legal disadvantage in relation to other vulnerable groups such as refugees, women, migrant workers, etc. . . . It can be said that persons with disabilities are equally as protected as others by general norms, international covenants, regional conventions, etc.

In 2000, the U.N. Commission on Human Rights adopted a resolution which urged the High Commissioner for Human Rights (in conjunction with the Special Rapporteur on Disability) “to examine measures to strengthen the protection and monitoring of the human rights of persons with disabilities and to solicit input and proposals from interested parties.”²² Ireland, which had sponsored this resolution, had originally included a direct call for work to begin on the drafting of a disability-specific convention but withdrew this because of opposition from a number of other EU countries.²³ In response to the 2000 resolution, the High Commission initiated a comprehensive study into the treatment of disability in the existing treaty system.²⁴

On December 19, 2001, the Third Committee of the U.N. General Assembly adopted a resolution calling for the establishment of an Ad Hoc Committee of the U.N. to consider proposals for “a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities.”²⁵ This resolution, proposed by Mexico, appears to have been made palatable to reluctant States only by the fact that it called for a Committee to examine proposals rather than to draft a convention.²⁶ The mandate of the Committee, however, was extended to cover the drafting of a convention - a task it began in its Third Session in May 2004 with the benefit of a draft text compiled by a Working Group of the Committee in the previous January.²⁷

Given the delicacy of its task, the clear (and necessary) refusal of the disability community to accept a reduced standard and the reluctance of delegates to commit their States to a convention requiring major upheavals in national law, the speed with which the Ad Hoc Committee (AHC) concluded its negotiations is impressive. The text to emerge from its deliberations is thought-provoking and, in many respects, radical.

²²C.H.R. Res. 2000/51, ¶ 30 (Apr. 25, 2000), available at:

<<http://www.internationaldisabilityalliance.org/index.php?l=en&p=39>> (last visited March 02, 2012).

²³Gerard Quinn & Theresia Degener, Expanding the System: The Debate about a Disability-Specific Convention in Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability 531-32 (Gerard Quinn & Theresia Degener eds., 2002), p.500. Some of these countries were Germany, England and Sweden.

²⁴Id. at 532. This study was published in 2002 as the Quinn and Degener review.

²⁵G.A. Res. 58/168, U.N. Doc. A/RES/56/168 (Feb. 26, 2002).

²⁶See Quinn, *supra* note 23, at 532-33.

²⁷G.A. Res. 58/246, ¶ 3, U.N. Doc. A/RES/58/246 (Mar. 11, 2004).

On August 25, 2006, this Ad Hoc Committee (AHC)²⁸ concluded its five year long task by reaching agreement on the substance of a draft International Convention on the Rights of Persons with Disabilities (CRPD).²⁹ The agreed text, having been revised by a drafting group, was approved by the Ad Hoc Committee (AHC) on December 5th and adopted by the General Assembly on December 13th.³⁰ This new human rights treaty, the first of the 21st Century, opened for signature on March 30, 2007 and entered into force on 3 May 2008.

The principal arguments for a disability-specific convention are to make it visible,³¹ specific³², effective³³, and comprehensive³⁴ and to assure equality.³⁵

²⁸Established by the General Assembly. See G.A. Res. 56/168, ¶ 1, U.N. Doc. A/RES/56/168 (Dec. 19, 2001). (The Ad Hoc Committee was charged with considering “proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development.”).

²⁹ U.N. Enable, Promoting the Rights of Persons with Disabilities, available at: <<http://www/un.org/esa/socdev/enable/rights/adhoccon.htm>> (last visited March 12, 2012).

³⁰Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, art. 1, 61st Sess., U.N. Doc. A/RES/61/106 (Jan. 24, 2007) [hereinafter CRPD].

³¹Pursuant to this view invisibility of disabled people as subjects of human rights and equality law is an inevitable consequence of their separation from the mainstream: a separation caused by their inability to access mainstream facilities due to physical and social barriers. See also A. Lawson, “The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?”, *34 Syracuse J. Int'l. L. & com.* 563, 573 (2007). (noting that “Even if their exclusion and humiliation are noticed, those who conceive of disability primarily in a medical or individual sense are unlikely to recognize such marginalization as involving any form of violation of human rights. It is likely to be attributed to the disabled person's impairment rather than to an inadequate social response to it.”) See also Gerard Quinn & Theresia Degener, Expanding the System: The Debate about a Disability-Specific Convention in Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability 181, 183 (Gerard Quinn & Theresia Degener eds., 2002),p.530. (Stating that “invisibility has . . . led to a tendency to disregard the normal legal protections for the advancement of human freedom that we take for granted. It is as though existing legal protections are either not applied or are applied with much less rigour in the case of persons with disabilities. One of the main tasks of the international human rights system in this field is to make societies aware of the contradiction between their self-professed values and their application (or rather their non-application or misapplication) in the context of disability.”) This invisibility of disabled people as subjects of human rights and equality law is an inevitable consequence of their separation from the mainstream: a separation caused by their inability to access mainstream facilities due to physical and social barriers.

³²According to this argument a disability-specific convention will provide clarity and focus. It will articulate precisely how general rights conferred, for instance, by the ICCPR and the ICESCR, take concrete form in the context of disability. The task of the drafters has not therefore been one of simply cutting and pasting relevant provisions into a single document. Rather, it has been to “tailor the relevant norms of the existing human rights treaties to the circumstances of disability.”

³³A major advantage of a disability convention, supported by an effective monitoring body, is that States will be obliged to report to the U.N. about the circumstances of disabled people. Such reports will have to be produced on a regular basis and should be required to cover issues besides those of medicine and welfare. This will oblige national monitoring bodies to collect relevant data and documentation. Over time, this data will build up to become an extremely valuable resource for those working to improve the position of disabled people in societies all over the world.

With regard to its visibility, it will draw attention to the fact that disabled people are holders of human rights and not merely recipients of welfare or charity. The Convention forces an acknowledgement of the contradiction between our universal values and our practice on disability throughout the world. Just as importantly, the convention removes the invisibility of persons with disabilities and partners them with government in moving the reform process forward. So the Convention provides a tool to force acknowledgement of a contradiction. In creating new political openings for persons with disabilities to interact with government, it also enables change to happen.

Further, the elaboration of a single instrument will simplify the process of accessing information about the U.N. position on disability.³⁶ There are a multitude of provisions relating to the human rights of disabled people scattered throughout great many different instruments.³⁷ The thematic convention will provide a central and authoritative focus. It will, however, supplement rather than replace these pre-existing provisions. More importantly, the clarification and simplification just outlined should prove useful to States in their efforts to ensure that the human rights of disabled people are not violated. Disability organizations will also benefit from the clarification and simplification promised by a new convention.³⁸ Despite these arguments in favor of the convention, there is also an argument against it.

The counter argument for disability-specific convention is: It does not establish new human rights for persons with disability.³⁹ Rather it is a redundancy of rights recognized by other legal instruments. These rights are composite rights stated in other international human rights

³⁴It incorporates both first and second generation rights.

³⁵It articulates a theory of justice that every citizen can subscribe to and in which every citizen has a stake. It is not a case of special rights for a particular group; it is about equal rights for all. And it is about making the democratic process open to all voices so that blockages can be dissolved and solutions found to deal with the legacy of the past and build a more inclusive society for all.

³⁶Meeting on International Norms and Standards Relating to Disability, Dec. 8-12, 1998, Report of the U.N. Consultative Expert Group Meeting on International Norms and Standards Relating to Disability (it can be referred as a source).

³⁷Supra note 5-15.

³⁸The Quinn and Degener review (supra note 23) found that the level of engagement of such organizations in the U.N. process was then "dismally low." Allowing them to focus their attention and resources on one particular convention (rather than the current seven) might encourage them to become more active at the international level and even prompt the establishment of new organizations focusing specifically on such issues. This would have obvious implications for the practical realization of relevant rights for disabled people.

³⁹These rights are usually referred as "composed rights".

instruments. For instance, civil and political rights, economic, social and cultural rights, child rights and women rights are recognized under ICCPR, ICESCR, CRC and CEDAW respectively.

2.2 Models of Disability and How They Shape the Global Response

The societal response to disability has not been the same in all the historical periods. It changed concurrently with the social, socio-cultural, economic and other changes that occurred throughout history. The development of various models of disability was particularly dynamic by the end of the 20th and the beginning of the 21st centuries.⁴⁰

A model is an approach or attitude towards disability that serves as the basis for defining concrete policies and measures towards persons with disabilities. At the same time, it serves as the basis for legislation that regulates the position of persons with disabilities. That is why the question what is the dominant model of disability in a given society is an extremely important issue.

Accordingly several models of disability have been conceptualized to help describe and understand disability and development. It is important to deal these models because they provide a perspective on the rationale for the policies and programs developed for, with, and by people with disabilities. However, for the sake of convenient only the five main models are dealt. These are charity, medical, social, citizenship, and bio-psychosocial models.

i. Charity Model

The charity model was the principal paradigm up to World War II and is the philanthropic and charitable approach to disability that provided medical treatment, community aid, and safekeeping for those described as being “less fortunate” and “defective.”⁴¹ This model portrays disability as a personal tragedy with people with disabilities being objects of pity and referred to as “crippled,” “crazy” or “idiot.”⁴² A common fund-raising strategy for disability projects was to portray people with disabilities as those who needed “help,” “care,” and “protection” from

⁴⁰Supra note 23.

⁴¹M. Crossley, “The Disability Kaleidoscope”, 74 *Notre Dame L. Rev.* 621 (1999) (she states any efforts that society undertakes in response to disabled people may be characterized as charitable efforts to respond to their neediness.)

⁴²The History of Disability, Supra note 80.

people without disability.⁴³ This entrenched society's view of people with disabilities as dependent. In addition, people with disabilities were sometimes portrayed as being dangerous and weird, creating fear and unease toward them.

This led to the belief that some people with disabilities needed to be hidden from society or institutionalized for the "good and protection of society."⁴⁴ It also promoted the perception that people with disabilities do not have the capacity to become equal members of society or the capacity to contribute economically and socially to their community's development. Therefore, many people with disabilities were institutionalized "for their own good."⁴⁵ But this assumption of institutionalizing persons with disabilities in the guise of for their own good is, in the view of the author, totally wrong. It makes sense if the assumption is in the otherwise. That is to say deinstitutionalizing and including them in the community is a strong claim to assume it is for their own good. Mainstreaming them in the community is not good only for them; it is also good to the community as a whole. If they are included, they could exploit their potential to themselves and to the society in which they are living in.

In a more positive light, charitable organizations were viewed as providing services at a time when no one else cared or were not able to participate. For example, in the latter part of the 19th century and early part of the 20th century, religious institutions primarily supported the needy and destitute because no social protection system existed to offer support for vulnerable people.⁴⁶ Many of these still function today in developed and developing countries to meet basic needs of the very vulnerable. Charitable services can also be described as being humanitarian during emergency situations in which the first priority for people in such need is security, care, attention, and support. Basic survival rather than empowerment is the priority in this context.⁴⁷ However, for people with disabilities, like other members of society, the need for charitable support should be the exception, not the rule.

⁴³Crossley, *Supra* note 41.

⁴⁴ L. Barton, *Disability and Society: Emerging Issues and Insights* (1996), Longman, London.

⁴⁵ C. Barnes, and G. Mercer. *Disability*. Cambridge (2003): Polity Press.

⁴⁶*Ibid.*

⁴⁷The History of Disability, *Supra* note 80.

ii. Medical Model

Traditionally disability has been viewed, not as an equality or human rights issue, but as a medical problem located within the particular individual who has the physical, sensory, intellectual, psychosocial or other impairment or condition.⁴⁸

The medical model emerged after World War II as a result of significant progress and advancement in the health sciences, technology, and pharmaceutical industry.⁴⁹ This created unprecedented improvements in the capacity of society to prevent the causes of impairment and improve the functional independence of people with impairments. There was tremendous growth in the western world leading to the institutionalization and financing of medical and social welfare services to a scale and magnitude not witnessed before.⁵⁰ However, this came with a price, the medicalization of disability. The services were provided within a paradigm that perceived people with impairments (“disabilities”) as “sick.”⁵¹ According to this model the problem of disability is located within the individual, i.e. a person is disabled due to his individual impairments and therefore requires medical interventions to provide the person with the skills to adapt to society.⁵² Should cure or correction prove impossible, they might attempt to rehabilitate an individual by training them in skills such as the use of a long cane or an electric wheelchair. The emphasis of this approach is on adapting the individual so as to enable them to function in the world around them.⁵³

⁴⁸CRPD, Supra note 30. See also Crossley, supra 41 (stating that “disability” is understood as a personal trait of an individual: an innate, biological trait that leaves the disabled individual in need of assistance to remediate the effects of the disability. She adds “under this view, a person’s disability is her own personal misfortune, for which there exists neither social cause nor social responsibility.” See also Michael Ashley Stein & Penelope J.S. Stein, *Beyond Disability Civil Rights*, 58 *Hastings L.J.* 1203, 1203 (2007). Due to this medical based pathology disabled persons have been either systemically excluded from social opportunities, as in the case of receiving social welfare benefits in lieu of employment, or have been accorded limited participation in those opportunities.

⁴⁹H. Howard, *Rehabilitation of the Physically Handicapped* (2d ed. 1953), p.21. (Scientific advances made during World War II resulted in higher survival rates for severely wounded soldiers.)

⁵⁰Barnes and Mercer. Supra note 45.

⁵¹Appropriate assistance is understood as either medical efforts to “cure” or minimize the trait’s effects or rehabilitation efforts to allow the individual to overcome its effects.

⁵²See Crossley, supra note 41. See also K. Fries, *Introduction to Staring Back: The Disability Experience From the Inside Out*, (Kenny Fries ed., 1997),p. 6-7 (noting that “this view of disability... puts the blame squarely on the individual”); Claire H. Liachowitz, *Disability as a Social Construct* 11 (1988).(averring that the “medical/pathological paradigm” of disability, which stigmatizes the disabled by conditioning their inclusion only “on the terms of the ablebodied majority”).

⁵³Although such measures have an important role to play in maximizing the independence of disabled people, there will inevitably be many who cannot be fully adapted - people with mobility impairments who will not be able to negotiate flights of steps or public transport systems; people with visual impairments who will not be able to read

Consequently the model places individuals into medical categories for medical convenience. While these people had the right to receive rehabilitation and medical services, it was the professionals who had the responsibility to decide what was best for the sick.⁵⁴ Empowerment of people with disabilities was limited to achieving functional independence through rehabilitation. This allowed professionals in general and medicine in particular to control the lives of people with disabilities. Doctors distribute categorical labels which carry social stigma, and these Doctors tend to be the adjudicators for resources to assist people with impairments. The medical professions own the knowledge and have the power to oppress people with disabilities.⁵⁵ It is, however, important to note that, institutionally it is the Ministry of health which has a significant role in determining the fate of persons with disability.

The medical approach to the management of the issues affecting people with disabilities results in disability being viewed primarily as an “impairment”—a problem of the individual.⁵⁶ Disability then, is an impairment or disease to be prevented and/or treated. Accordingly, people with disabilities would be institutionalized or isolated from the community and professionals, mostly within the medical and rehabilitation system, would direct. Input by people with disabilities or their family members would not normally be viewed as a necessary step in the planning and decision-making process. The expectation to support people with disabilities beyond the medical/rehabilitation system was not a priority of policy makers.⁵⁷

Rather than attempting to address the systemic discrimination in society, policies that adhered to the medical model focused on solving “the problem (of misalignments between individuals and

the print in their school books; people with hearing impairments who will not be able to make themselves understood by strangers unfamiliar with sign language. For such people, the medical or individual approach to disability has little to offer beyond a lifetime of unfulfilled potential and segregation. Unable to access mainstream education or employment, these people must depend for their survival on welfare benefits or charity.

⁵⁴Canadian Association of Independent Living Centres (CAILC). 1992. Description of the Core Programs of Independent Living Centres. Ottawa. See also R.R. Gadacz, Re-Thinking Disability: New Structures, New Relationships(1994),. Edmonton, Alberta: University of Alberta Press, p.212.

⁵⁵Crossley, Supra note 41.

⁵⁶Howard, Supra note 71.

⁵⁷M Oliver, and C. Barnes, Disabled people and social policy: from Exclusion to inclusion, (1998), Harlow, Longman,p.430. See also L. Waddington & M. Diller, Tensions and Coherence in Disability Policy (2006). The Uneasy Relationship Between Social Welfare and Civil Rights Models of Disability in American, European and International Employment Law, in Disability Rights Law And Policy: International And National Perspectives 241, 244 (Mary Lou Breslin & Silvia Yee eds., 2002). (The policy track for persons with disabilities regarded them as defective and focused on providing this group welfare and rehabilitation to cope in a society filled with barriers).

social practice) by realigning (eligible) individuals.”⁵⁸ The idea is that persons with disabilities should be cured, rehabilitated, or fixed.⁵⁹ In essence, the medical model regarded disabled persons’ impairments as the problem and, accordingly, laws and policies focused on training persons with disabilities to manage in a barrier-filled society. In other words, the medical model focused on teaching a person who required a walking frame how to navigate steps rather than requiring buildings to include lifts or ramps.

When translated in to policy, as Waddington , a writer on disability scholarship , recounts , the medical model relies on “rehabilitation and welfare facilities to mediate or accommodate the effects of disabilities by establishing separate facilities, such as nursing homes, sheltered workshops, and special education schools, separate from the facilities that served the non disabled.⁶⁰ The assumption here is that rather than making mainstream institutions accessible, the principal assumption of the social model, the needs for people with disabilities are better served in separate facilities that can be constructed to meet very specialized needs.⁶¹

This approach creates a passive and isolationist relationship between the “patient” and the “professional” within a philosophy of a “helping” system.⁶² It emphasizes the “sick” role and medicalization of disability, and perpetuates dependency on the system.⁶³ Empowerment is valued only in terms of the extent to which people with disabilities can perform activities of daily living related to functional independence. Little responsibility is placed on the role of the environment, including the attitudes of society toward an impairment or handicap.⁶⁴

⁵⁸A. Silvers, *Formal Justice*, in *Disability, Difference, Discrimination: Perspectives on Justice in Bioethics and Public Policy* 13, 85 (Anita Silvers et al. eds., 1998). Silvers demonstrates that what is deemed by society to be a dysfunction is often more accurately described as atypical, anomalous, or diverse modes of functioning or the product of an inhospitable physical or social environment.

⁵⁹T. Shakespeare, *Disability Rights and Wrongs*, p. 29-53 (2006) (critiquing the medical and social models).

⁶⁰L. waddington, “Legislating to Employee People with Disabilities: The European and the American way (1996)” *Maastricht Journal of European and Comparative Law*, vol.1, pp.367-95.

⁶¹A.Katharina; “A disability Lens on sociological reaserch : Reading rights of Inclusion from a disability studies perspective (2007),” *J. Law and sociological Inquiry* ,vol.32,No.1, pp.261-293.

⁶²Crossley, *supra* note 41.

⁶³Conceived in such a way, disability indicates helplessness, disease, dependence from the others and existence of the so-called “special needs” of persons with disabilities.

Such an attitude is essentially discriminatory because persons with disabilities have various capacities, potentials and qualities, and not only their disability. Persons with disabilities are not helpless; on the contrary, they could do a lot, both for themselves and for their community if the society had created for them equal opportunities for participation in social life. They also do not have any special needs, compared to the others they just satisfy their needs in another way.

⁶⁴Id (arguing that the social structure has nothing to do with the individual’s disability).

Critics of the medical model focused on its inherent narrowness, limitations, and its concept of the individual “experience” of impairment as being too simplistic.⁶⁵ Furthermore, medical model programs that are institutionally based are also very costly.⁶⁶ That is to say there is a need of appointing professionals and there is a huge amount of administrative expenses. This is particularly relevant when, in many instances, the vast majority of the needs of people with disabilities living in institutions or hospitalized could be more cost effectively provided through alternative community-based programs.⁶⁷

It was clearly reflected in the UN resolutions.⁶⁸ International resolutions relating to disabled persons were initially steeped in the medical model.⁶⁹ For example, the General Assembly and the United Nations Economic and Social Council adopted a series of resolutions during the 1950s and 1960s directed both at preventing future disability and at rehabilitating existing disabilities.⁷⁰ Indeed, the title of the Economic and Social Council’s 1950 resolution--Social Rehabilitation of the Physically Handicapped--indicates a policy targeting disabled people as the locus of treatment, rather than the external environment.⁷¹

Despite, both the 1971 Declaration on the Rights of Mentally Retarded Persons and the 1975 Declaration on the Rights of Disabled Persons acknowledge the equality of disabled individuals,

⁶⁵Oliver, *supra* note 79.

⁶⁶L. J. Edmonds, *Disabled People and Development* No. 12/ June 2005.

⁶⁷*Ibid.* see also E., Helander, *Prejudice and Dignity, An Introduction to Community-Based Rehabilitation* (Second Edition). UNDP, New York 1999; *Community-Based Rehabilitation for and with People with Disabilities*, Joint Position Paper, International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Health Organization (WHO), 1994. Furthermore, Rule 3 (Rehabilitation) of the UN Standard Rules states that “All rehabilitation services should be available in the local community where the person with disabilities lives. However, in some instances, in order to attain a certain training objective, special time-limited rehabilitation courses may be organized, where appropriate, in residential form.” The importance of living within one’s own community is also stressed by Principle 7 of the “Principles for the protection of persons with mental illness and the improvement of mental health care” which states:

1. Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.

2. Where treatment takes place in a mental health facility, a patient shall have the right, whenever possible, to be treated near his or her home or the home of his or her relatives or friends and shall have the right to return to the community as soon as possible.

⁶⁸*Supra* note 5-8.

⁶⁹ *Ibid.*

⁷⁰*Supra* note 16.

⁷¹*Ibid.* See A. Howard, *Rusk, Rehabilitation Medicine* (1964), p.45. (Particularly influential among post-World War II international instruments was the “whole man” schema of vocational rehabilitation. This method sought to “treat” disabled persons to facilitate their social participation. In this way, the method further instantiated the medical model’s notion that people with disabilities, rather than society, must change.

yet, these instruments possessed vestiges of the medical model by assuming individuals are disabled due to “special” medical problems that require segregated social services and institutions as remedies.⁷²

iii. Social Model

In contrast to the medical model, disability studies⁷³ scholars have long argued for an understanding of disability through a “social” model⁷⁴- an understanding of disability in which disability exists not solely in a person’s body, but in the interaction between the person’s body and its environment.⁷⁵ Thus, the “social model” of disability recognizes that the disadvantages often associated with disability do not flow inevitably from mental or physical impairments per se, but instead flow from social systems and structures.⁷⁶ This model of disability is not a traditional diagrammatic model like many psychological and sociological models, but a progressive political concept that opposes the medical model commonly used in the health professions.⁷⁷

⁷²Id (Emphasizing the need to protect disabled persons and their access to segregated services); Declaration on the Rights of Disabled Persons, supra note 108, at para. 8 (underscoring the needs of disabled persons to “special” services).

⁷³Disability studies is an academic discipline analogous to that of critical race or feminist theory.

⁷⁴The move away from the medical model to the social model required “a switch away from focusing on the physical limitations of particular individuals to the way the physical and social environments impose limitations upon certain groups or categories of people.” Accordingly, the social model focuses upon dismantling socially constructed barriers to full inclusion.

⁷⁵M. Crossley, “Reasonable Accommodation as Part and Parcel of the Antidiscrimination Project,” 35 *Rutgers L.J.* 861, (2004). See also Pope AM, Tarlov AR, (Editors), *Disability in America: toward a national agenda for prevention*, Washington, DC: National Academy Press, 1991 (noting People with...functional limitations are not inherently disabled, that is, incapable of carrying out their personal, familial, and social responsibilities. It is the interaction of their physical and mental limitations with social and environmental factors that determines whether they have a disability).

⁷⁶See Crossley, supra note 41 (“Society has constructed barriers - physical, institutional, and attitudinal - that prevent persons with disabilities from participating fully in the mainstream of life; hence, these barriers are not natural.”) see also *Union of Physically Impaired Against Segregation, Fundamental Principles of Disability* (Nov. 22, 1975), available at < [http:// www.leeds.ac.uk/ disability-studies/archiveuk/UPIAS/fundamental%20principles.pdf](http://www.leeds.ac.uk/disability-studies/archiveuk/UPIAS/fundamental%20principles.pdf)> (last visited Apr. 22, 2012). H. Liachowitz, *Disability as a Social Construct: Legislative Roots* (1988), p. 34.

⁷⁷Scholars who assert a social model of disability do not deny the biological reality of impairment or the existence of some limitations and (sometimes) pain unavoidably related to some impairments. They do, however, reject the assertion that “the disabled” somehow constitute a distinct and inferior biological class and instead insist that it is the social response to biological reality that constructs disability. See S. Wendell, *The Rejected Body: Philosophical Reflections on Disability* (1996), p. 31 (“Widespread perceptions that people with disabilities are similar in very significant ways create the category ‘people with disabilities.’ Thus it is various aspects of their treatment by their societies that people with disabilities are most likely to have in common; these will often be aspects of social oppression.”); H. Hahn, *Civil Rights for Disabled Americans: The Foundation of a Political Agenda*, in *Images of the Disabled, Disabling Images* (Alan Gartner & Tom Joe eds., 1987), p. 192 (“Presumptions of biological

This framework maintains that the socially engineered environment and the attitudes reflected in its construction play a central role in creating “disability.”⁷⁸ In other words it is collectively mandated decisions that determine what conditions comprise the bodily norm in any given society. Thus, factors external to a disabled person’s limitations are really what determine that individual’s ability to function.⁷⁹

It recognizes that some individuals have physical or psychological differences which can affect their ability to function in society.⁸⁰ However it suggests it is society that causes the individual with these physical or psychological differences to be disabled.⁸¹ In other words individuals with impairments are not disabled by their impairments but by the barriers that exist in society which do not take into account their needs. These barriers are usually environmental,⁸² economical⁸³ and cultural.⁸⁴

inferiority or superiority are antithetical to the competing paradigm that regards disabled citizens as a minority group.”).

⁷⁸H. Hahn, “Feminist Perspectives, Disability, Sexuality, and Law: New Issues and Agendas,” *4. S. Cal. Rev. L. & Women’s Stud.* 97, 105 (1994). (explaining the social model is based on three major postulates: (1) the primary problems faced by disabled persons stem from social attitudes rather than from functional limitations; (2) all facets of the man-made environment are shaped or molded by public policy; and (3) in a democratic society, public policies represent prevailing public attitudes and values).

⁷⁹The framework derives from both British and American disability rights scholars, although the latter have written more extensively on the legal implications of the model. Some scholars credit Michael Oliver with originating the social model theory. See Michael Oliver, *Social Work with Disabled People* 23 (1983) (the social model is “nothing more fundamental than a switch away from focusing on the physical limitations of particular individuals to the way the physical and social environments impose limitations on certain groups or categories of people”).

⁸⁰British Council of Disabled People, *The Social Model of Disability* Derby (1981).. Available at: <<http://www.bcodp.org.uk/about/research.shtml>> (last visited March 05,2012). see also J.Clapton, & Fitzgerald, J. (1997) *New Renaissance magazine: The History of Disability: A History of 'Otherness'*. Vol 7, No 1. Available at: <<http://www.ru.org/artother.html>> (last visited March 05,2012).

⁸¹J. Swain, Finklestien, V. French,S. & Oliver, M. *Disabling Barriers – Enabling Environments* (1993). SAGE: London.

⁸²The environment disables impaired people by not being accessible enough for them to move, function and communicate as effectively as people without impairments. A great deal of the environment is designed by non-impaired people, for non-impaired living. For example, a person in a wheel chair is only ‘disabled’ if the environment is not designed for people with wheel chairs. A wheel chair friendly building would probably include ramps, lifts, wide doorways and corridors and accessible fittings such as light switches, and motorized doors etc. Whilst these modifications benefit people who use wheel chairs they can also benefit non-impaired people.

⁸³Economically, society does not provide the same opportunities to people with impairments. This starts at school and continues throughout one’s career. At school, lessons are designed for non-impaired people, using environments and teaching methods that are not suitable for some individuals with impairments. For example a person with dyslexia has a learning disability only in a lesson structured for non-dyslexic students. If the lesson is taught in a way that suits people with dyslexia then they will not have a disability. The workplace and traditional job roles often do not suit people with impairments. Places of work are often unnecessarily inaccessible and people with impairments are often paid less than people without impairments.

The social model marked the 1970s and 1980s.⁸⁵ It emerged as a result of a political movement led by people with disabilities to destabilize and deconstruct the medical model of disability.⁸⁶

For the past three decades the Disability Movement has worked tirelessly to challenge the assumption that, unless a person with impairment can be cured or corrected, they must remain outside the mainstream of their societies, depending on welfare or charity for their very existence.⁸⁷ Fundamental to this movement is a rejection of the perception of disability as a problem located entirely within the individual.⁸⁸

Hence, it is plausible to argue that, it was a response to the medicalization of disability and its profound negative effects on the self-identity of many people with disabilities, and the negative attitudes created as a result of the charity and medical models. The aim was to create positive attitudes about people with disabilities by people with disabilities, their families, and especially society as a whole. This was to be achieved by creating a better understanding of the rights of people with disabilities and the imperative to overcome the economic, social, and environmental barriers that affect the ability of people with disabilities to participate and engage in community life like other citizens.⁸⁹ Terminology mattered, leading to the identification of “people with disability” and “people/persons with disabilities” as the most appropriate terms. The emergence of the social model made room for considering issues of abuse, negligence, isolation, and marginalization in the lives of disabled women, children, and men by shifting the focus away

⁸⁴Culturally, society lets impaired people down because of the prejudiced views and negative shared attitudes of the non-impaired community towards people with physical and psychological impairments. Prejudice is associated with the recognition of difference, and “disabled” people are not seen as normal in the eyes of “non-disabled” people. Prejudices are evident in language and the terminology used to describe people with impairments, much of which is derived from medical labels. People are more than just a label describing a negative attribute, and the stigma attached to those labels means that people with impairments are held back from achieving what they want to achieve. The mass media is also responsible for many of the shared negative meanings and discourses which create stereotypes and prejudices.

⁸⁵UPIAS, *Fundamental Principles of Disability*. Union of the Physically Impaired Against Segregation (1976). (The Social Model of Disability was initially introduced in the mid-seventies by a “disabled” lecturer Mike Oliver).

⁸⁶Ibid. See also J. Campbell, and M. Oliver, *Disability Politics: Understanding our past, changing our future*(1996), Routledge, London. M Oliver, *Social Work with Disabled People* (1983), Basingstoke Macmillans. M .Oliver, *The Politics of Disablement* (1990), Basingstoke Macmillans.

⁸⁷Ibid, UPIAS.

⁸⁸British Council, supra note 80.

⁸⁹Id. See also Human Resources Development Canada (HRDC), *Advancing the Inclusion of Persons with Disabilities*(2002), Hull, Quebec.

from the disabling condition as presented in the medical and charity models to the environment as a disabling element.⁹⁰

The social model locates disability outside the individual and places it in an oppressive and disabling environment.⁹¹ It focuses on the community, society, and the role of government in discriminating against and excluding people with impairments, rather than on the individual and his or her “own” impairment, as expressed in the medical model. Advocates of the social model convincingly argued that the problem to be addressed is neither biological nor medical and that it is not the individual but the social context that is disabling.⁹² The problems are the prevailing social norms, environmental barriers, and negative attitudes constructed and held by the nondisabled members of society. This restricts the ability of people with impairments to become integral members of society and equal citizens of their communities. This model clearly articulates the power of and necessity for consumer participation in decision making to facilitate good and sound governance through inclusion of people with disabilities in policy making.⁹³

It also argues that disabled people must be at the centre of voicing their own experiences. The social model was constructed by disabled people, not medical “experts”, not policy makers, not social workers, not disability charities, not service providers, nor governments, nor private companies profiting from disability.⁹⁴

It has been recognized by international instruments.⁹⁵ Beginning in the 1970s international instruments evidenced a gradual shift from the medical model to the social model of disability.⁹⁶ Consequently, both the 1971 Declaration on the Rights of Mentally Retarded Persons and the 1975 Declaration on the Rights of Disabled Persons acknowledge the equality of disabled individuals.⁹⁷ More importantly, the Vienna Declaration assisted in accelerating the trend toward

⁹⁰Finklestien, *supra* note 81.

⁹¹D. Driedger, *The Last Civil Rights Movement: Disabled Peoples' International* (1989), New York: St. Martin's Press. See also Gadacz, *supra* note 54.

⁹²Canadian Association, *supra* note 54.

⁹³*Supra* note 45.

⁹⁴<<http://www.leeds.ac.uk/disability-studies/archiveuk/Oliver/in%20soc%20dis.pdf>> (last visited March 10,2012).

⁹⁵*Supra* note 6,7,11 & 12.

⁹⁶J. Brian Doyle, *Disability Discrimination: The New Law* (1996). See also G. Christopher Bell, *U.S. Common on Civil Rights, Accommodating the Spectrum of Individual Abilities* (1983).

⁹⁷For example, the Declaration on the Rights of Mentally Retarded Persons declares that persons with disabilities have the same civil and political rights as other human beings (Declaration on the Rights of Mentally Retarded

the social model of disability by maintaining that disabled persons “should be guaranteed equal opportunity through the elimination of all socially determined barriers,” including any “physical, financial, social or psychological” obstacles that “exclude or restrict full participation in society.”

98

It was the following decade that saw a more thorough adoption of the social model of disability at United Nations level.⁹⁹ The CRPD is the typical example in this regard. It incorporated a transformative view of disability, moving away from the “medical model” of disability toward a “social model” of disability.¹⁰⁰ In the Convention, the focus is no longer on a perceived “wrongness” of the person, with the impairment seen as a matter of deficiency or disease.¹⁰¹ On the contrary, the Convention views disability as a “pathology of society”, that is, as the result of the failure of societies to be inclusive and to accommodate individual differences.¹⁰² Societies need to change, not the individual, and the Convention provides a road map for such change. The CRPD, however, goes much further than the social model. It articulates the human rights approach. The rights-based approach to disability essentially means viewing persons with

Persons, G.A. Res. 2856 (XXVI), at 93, U.N. GAOR, Supp. No. 29, U.N. Doc. A/8429 (Dec. 20, 1971), at para. 4). See also Standard Rules, *supra* note 33, at rules 1, 4. The social model of disability is reflected in the articulation of the Standard Rules’ aspirations: “the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation.” World Programme of Action Concerning Disabled Persons I (1982). Available at :< <http://www.un.org/esa/socdev/enable/diswpa01.htm>> (last visited March 05,2012).(Equalizing opportunities was defined as “the process through which the general system of society, such as the physical and cultural environment” is rendered accessible.)

⁹⁸World Conference on Human Rights, June 14-25, 1993, Vienna Declaration and Programme of Action, U.N. Doc A/CONF. 157/24 (July 12, 1993) [hereinafter Vienna Declaration], at para. 64 (disabled persons “should be guaranteed equal opportunity through the elimination of all socially determined barriers,” including any “physical, financial, social or psychological” obstacles that “exclude or restrict full participation in society”).

⁹⁹The General Assembly World Summit on Social Development , G.A. Res. S-24/2, para. 66, U.N. Doc A/RES/S-24/2 (July 1, 2000). (The General Assembly World Summit on Social Development acknowledged the necessity of changing the socially constructed environment in accordance with the Standard Rules “to empower persons with disabilities to play their full role in society.”)

¹⁰⁰E. Janet & Michael Ashley Stein, “The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities”, 83 WASH. L. REV. 449, 460 (2008) (Noted the fact that: [t]he Convention categorically affirms the social model of disability in relation to persons with disabilities by describing it as a condition arising from “interaction with various barriers [that] may hinder their full and effective participation in society on an equal basis with others instead of condition arising from inherent limitations.” Furthermore, the CRPD endorses explicitly the social model of disability in the Preamble (e), by recognizing that disability is the result of “the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.” See also Gerard Quinn et al., *Human Rights and Disability I* (2002).

Available at :<<http://www.nhri.net/pdf/disability.pdf>> (Last visited March 10, 2012).

¹⁰¹P. Harpur, “Time to be heard: how advocates can use the convention on the rights of persons with disabilities to drive change”, 45 *val. U.L. Rev.*1271 (2011).

¹⁰²*Ibid*

disabilities as subjects of law and respect their dignity.¹⁰³ Its final aim is to empower disabled persons by giving due attention of rights and opportunities, and to ensure their active participation in political, economic, social, and cultural life in a way that is respectful and accommodating of their difference.

In asserting that the socially constructed environment creates disabling conditions, the social model avers that altering that environment allows disabled persons to participate in society at large. Reasonable workplace accommodations are a typical example of correcting artificially prejudicial conditions previously held out as neutral. Providing accommodations in the workplace changes existing hierarchies, ultimately suggesting a lack of inevitability in the structure and conception of particular occupations.¹⁰⁴ By removing unnecessary barriers to participation, accommodations bring about equality as conceived by formal justice. The issue of reasonable accommodation is addressed under chapter four in depth.

The above discussion clearly attests to the social model's powerful and constructive influence on the discourse of persons with disability. Despite its significance contribution, it is subject to severe criticisms. Primarily it discredits medical or technological attempts to cure or ameliorate the impairment giving rise to a disability.¹⁰⁵ In other words, as it is mainly puts the problem on the society, it totally neglects the positive contribution of medication.

The second critic is this. We have seen that the social model stresses society's role in constructing disability and its responsibility to rectify disability-based exclusion. Yet, because advocates have justified this scheme exclusively through formal justice notions, the model has neglected economic, social and cultural rights. This in turn has two problems. First, because it is based exclusively on this notion of corrective justice, it must overcome the deeply entrenched fallacy that society justifiably excludes disabled persons due to their inherent limitations.¹⁰⁶ In seeking to win this fight, social model advocates have taken an over-inclusive position of rejecting all, instead of many or most, disability-related exclusions as arising from arbitrarily selected biological norms. This effort is unnecessary because correcting exclusionary conditions

¹⁰³Id.

¹⁰⁴M. A. Stein, "Disability Human Rights", 95 Cal.L.Rev.75 (2007).

¹⁰⁵See Crossley, *supra* note 75.

¹⁰⁶C. Jolls, "Antidiscrimination and Accommodation", 115 Harv. L. Rev. 642, (2001),p643-44.

(and the attitudes supporting them) need not be contingent on the application of first-generation rights alone.

This brings forward the second, and more important, problem: while the social model's precepts are essential to civil rights assertions, they ultimately fall short within the human rights field. The social model draws an inclusive, yet firm line at equal treatment of equally situated individuals,¹⁰⁷ thereby effectively excluding additional second-generation support for disabled persons not contingent on narrower corrective justice notions.¹⁰⁸ By contrast, second-generation rights recognize that all disabled persons are entitled to equal opportunities because of their equal humanity, not because they reach levels of functional sameness,¹⁰⁹ and thereby allows for individual differences among people with disabilities.

In so doing, second-generation rights cover two circumstances. They encompass entitlements that benefit persons with disabilities who fall outside standard sameness arguments. This is because some individual variations are not accounted for, even when using broad and inclusive principles, for instance those contained in the architectural concept of Universal Design.¹¹⁰ Second-generation rights also include measures that are necessary to effectuate first-generation rights. Thus, while first-generation rights may prohibit discrimination in employment, second-generation rights make labor market participation possible by providing health care, education, and employment preferences and quotas. By limiting their advocacy to first-generation rights, social model proponents have neglected further empowering possibilities.

¹⁰⁷In other words, the social model is predicated on treating like cases alike.

¹⁰⁸Social, economic, and cultural rights are derived from the field of social justice which advocates treating all individuals equally, whether or not they are in fact equal.

¹⁰⁹J. Donnelly, *Universal Human Rights in Theory and Practice* (2003), p.10 ("Human rights are, literally, the rights that one has simply because one is a human being.... Human rights are equal rights).

¹¹⁰The central tenet of Universal Design is an "approach to creating environments and products that are usable by all people to the greatest extent possible." encompasses not only people with disabilities but also parents with small children and women forced to wait for public toilets), it is nevertheless frequently described as a disability-specific issue. The same notion is stated under art.2 of the CRDP which reads:"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed. The social model focuses upon universal design and the removal of barriers largely through civil rights statutes.

iv. Citizenship Model

The period of the 1990s to the present represents a further reconceptualization of disability and development into the citizenship model.¹¹¹ Research on the introduction of community-based rehabilitation (CBR) into the mainstream of the health system in Bosnia-Herzegovina¹¹² and an extensive review of the literature shaped the construction of the framework of the citizenship model. It identified the need to bridge the dichotomy of the medical and social models by using an integrated development approach.¹¹³ The key is that all stakeholders have the opportunity to contribute to and benefit from the reform of disability policies, education, and service at the community and institutional levels.

The research reported that people with disabilities desire access to a continuum of services offered by various stakeholders from the institution to the community level.¹¹⁴ These represent core strategies for poverty reduction and integration. Stepping out of the poverty cycle will only be achieved when public and private sector institutions, community programs, and all sectors mainstream disability. Collectively, they must create common knowledge, capacity, and understanding; break down barriers; and promote equality toward an inclusive society. Collectively, they must reach the most vulnerable, particularly women and children and those in rural and isolated settings.¹¹⁵

This model demonstrated that people with disabilities are not greatly concerned about whether or not leaders are disabled persons or members of another stakeholder group. Rather they want the

¹¹¹Canadian Association of Independent Living Centres (CAILC). 1993. A Step Toward Independent Living: How to Develop an Independent Living Resource Centre in your Community (Resource Guide). Ottawa as cited in L. J. Edmonds , , Disabled people and Development: poverty and social development papers no. 12/ June 2005. Available at: <<http://hpod.pmhclients.com/pdf/Disabled-people-and-development.pdf>> (Last visited March 10, 2012).

¹¹²L. J. Edmonds, The Post Conflict Integration of Persons with Disabilities in Bosnia-Herzegovina(2002b) PhD Thesis. Norwich: University of East Anglia as cited in Edmonds , L. J. , Disabled people and Development: poverty and social development papers no. 12/ June 2005. Available at: <<http://hpod.pmhclients.com/pdf/Disabled-people-and-development.pdf>> (Last visited March 10, 2012).

¹¹³World Health Organization. 2001. International Classification of Functioning, Disability and Health. Geneva. Available at: <www.who.ch/icf> (Last visited March 10, 2012).

¹¹⁴Lorna ,Supra note 66.

¹¹⁵L. Crow, Including All of Our Lives: Renewing the Social Model of Disability. In Encounters with Strangers: Feminism and Disability, (edited by J. Morris) (1996) London: The Women's Press Ltd. See also M. Dowling, and L. Dolan.. Families with Children with Disabilities – Inequalities and the Social Model. Disability and Society (2001). Canadian International Development Agency (CIDA) (2000), CIDA's Social Development Priorities: A Framework for Action. Ottawa: Ministry of Public Works and Government Services Canada. A., Hans, and A. Patri.; Women, Disability and Identity (2003); London: Sage Publications.

main consideration for leadership, advocacy, and decision making to be the capacity to manage and influence social change in a way that improves their ability and that of their stakeholders to participate and be empowered.¹¹⁶

In this model, however, empowerment has a much broader definition and scope than in the medical and social models. People with disabilities who participated in the research stated that empowerment (and thus citizenship) for them meant participation in decision making, changes to the environment, and human rights legislation.¹¹⁷ Of equal importance was a degree of control over, as well as access to, the skills, knowledge, and support systems that facilitate functional independence. It was also the capacity to manage in a way that was empowering for all.¹¹⁸

Accordingly, the citizenship model represents an international development paradigm in which people with disabilities deserve and aspire to have the same opportunities as other citizens of their community.¹¹⁹ This model aims to conceptualize a development framework that focuses on building an inclusive civil and rights-based society that is committed to diversity, equality, and participation of all. This is achieved by recognizing the diversity and uniqueness of people with disabilities, particularly women, children, and the aging population.¹²⁰ They must be granted equal opportunities for achieving full economic potential and realizing their human rights.

Furthermore, this model aims to overcome the shortcomings of the social, medical and charity models and build on their strengths. It aims to capture the individual and social response to disability in terms of people's capacities and restrictions in a positive and constructive way that contributes to the inclusion and integration of all members of society.¹²¹ A priority is also to focus on the issues related to people with disabilities who are underrepresented within the global movement, such as women, youth, children, indigenous peoples, and those with "invisible"

¹¹⁶Hahn, supra note 78.

¹¹⁷Edmonds, Supra note 112.

¹¹⁸Ibid.

¹¹⁹E. Helander, Prejudice and Dignity: An Introduction to Community Based Rehabilitation (1993). New York: United Nations Development Programme. See also Human Resources Development Canada (HRDC), Advancing the Inclusion of Persons with Disabilities (2002). Hull, Quebec.

¹²⁰Hahn, supra note 78.

¹²¹Ibid. see also D. Stienstra, Y. Fricke, and A. D'Aubin., Baseline Assessment: Inclusion and Disability in World Bank Activities (2002). Washington, DC: World Bank.

disabilities, such as people with mental health problems and intellectual disabilities.¹²² Such people are often the poorest members of society.

One implication of the citizenship model is that all stakeholders must be educated and involved to create an environment of power sharing and capacity for partnership. Society must be changed to embrace the full range of these empowering activities for the needs of people with disabilities. It requires a balanced combination of measures for the equalization of opportunities, rehabilitation, management, and prevention through access to the full range of options available to all members of their communities.¹²³ It requires building the capacity of all agencies and support systems in communities to understand the needs of people with disabilities and the strategies for their integration.

v. Bio-psycho-social Model

Many claim that the original version of the bio-psychosocial model came from the publication of the International Classification of Functioning, Disability and Health (ICF) in 2001.¹²⁴ ICF is based on a bio-psycho-social model that integrates features of both the medical and social frameworks.¹²⁵ Accordingly this model assumes disability is always an interaction between features of the person and features of the overall context in which the person lives, but some aspects of disability are almost entirely internal to the person, while another aspect is almost entirely external.¹²⁶ In other words, both medical and social responses are appropriate to the

¹²²See Crossley, supra note 75.

¹²³British Council, supra note 80. See also International Centre for the Advancement of Community Based Rehabilitation (ICACBR), War Victims Rehabilitation Project in Bosnia and Herzegovina Final Report (2001), Kingston: Queen's University-ICACBR.

¹²⁴<http://www.esds.ac.uk/government/los/faq/> (last visited April 20,2012). See also World Health Organization. International classification of functioning and disability, ICIDH-2. Beta-2 draft, full version. Geneva: World Health Organization, 1999. ICF,2001, Supra note 109.

¹²⁵World Health Organization, Towards a Common Language for Functioning, Disability and Health (2002): ICF. Geneva (In a shift from the previous WHO formulation, ICF emphasized health and functioning, rather than disability."Previously, disability began where health ended; once you were disabled, you were in a separate category. We want to get away from this kind of thinking....This is a radical shift. From emphasizing people's disabilities, we now focus on their level of health. ICF puts the notions of 'health' and 'disability' in a new light. It acknowledges that every human being can experience a decrement in health and thereby experience some disability. ICF thus 'mainstreams' the experience of disability and recognizes it as a universal human experience. By shifting the focus from cause to impact it places all health conditions on an equal footing allowing them to be compared using a common metric - the ruler of health and disability".) See also WHO World report on disability, 2011 (noting promoted as a "bio-psycho-social model", it represents a workable compromise between medical and social models.)

¹²⁶J. Douglas Lanska, Evolving concepts of disability and rehabilitation (2009), p.40.

problems associated with disability; we cannot wholly reject either kind of intervention. In ICF disability and functioning are viewed as outcomes of interactions between health conditions (diseases, disorders and injuries) and contextual factors.¹²⁷ Among the contextual factors are external environmental factors¹²⁸; and internal personal factors.¹²⁹

The ICF, adopted as the conceptual framework for the 2011 World report on disability, understands functioning and disability as a dynamic interaction between health conditions and contextual factors, both personal and environmental.¹³⁰

The bio-psycho-social model posits that biological, psychological (which entails thoughts, emotions, and behaviors), and social factors, all play a significant role in human functioning in the context of disease or illness. Indeed, health is best understood in terms of a combination of biological, psychological, and social factors rather than purely in biological terms.¹³¹

Gill Thornton, a scholar on this field, describes this model from a medical approach, while clearly identifying the popularization of its later use as a tool in getting disabled people back to work. He states that “it is a theory that seeks to broaden the perspective on illness, by taking into account not only the biological, but also psychological and social factors which may have an influence on sickness, and consequently on the course that healing takes. The acknowledged value of this approach, when used for the benefit of the patient, is that it allows for the identification of non-biological influences which may interfere with an individual’s capacity to heal.”¹³²

Since this model acknowledges that whether a person performs a socially expected activity depends not simply on the characteristics of the person but also on the larger context of social

¹²⁷World Bank, *supra* note 121. See also WHO World report on disability, 2011 (Disability is the umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual (with a health condition) and that individual’s contextual factors (environmental and personal factors)).

¹²⁸Environmental factors include: social attitudes, civil society, legal and social structure, support services, architectural barriers, climate, as well as numerous other factors.

¹²⁹Personal factors include: gender, age, ways of coping with stress, social background, education, profession, past and present experience, the overall behavior pattern, the character, and a series of other factors.

¹³⁰WHO, *World report on disability*, 2011.

¹³¹P.W Halligan, & Aylward, M. (Eds.), *The Power of Belief: Psychosocial influence on illness, disability and medicine* (2006), . Oxford University Press, UK. See also J. W. Santrock, *A Topical Approach to Human Life-span Development* (3rd ed.) (2007), St. Louis, MO: McGraw-Hill.

¹³²<http://www.democraticgreensocialist.org/wordpress/?page_id=1716? > (Last visited April 25, 2012).

and physical environments, as a result, it offers a much broader focus of activities at both societal and individual levels to minimize disability.¹³³ Specifically, this model helps to set the rehabilitation agenda clearly in a social context while still recognizing that disease has an important influence on patients' levels of physical activity and social participation and on the process of rehabilitation.¹³⁴ This model also extends the boundaries of rehabilitation - from the few conditions where recovery is expected to any condition in which someone experiences disability or handicap secondary to (or as part of) illness.¹³⁵

As a result the ICF framework can be used to guide potential intervention or prevention approaches.¹³⁶ To that end the goal of primary intervention is to preserve health and reduce the incidence of disease, injuries, and other health conditions; therefore, primary prevention incorporates health promotion activities (eg, good nutrition, exercise, etc.) and specific protective measures (eg, immunization, purification of water supplies, workplace environmental modifications to reduce injuries, etc.). Primary intervention is applicable to those who are healthy, as well as to those who have health conditions, impairments, activity limitations, and participation restrictions.¹³⁷ The goals of secondary interventions are the early detection and prompt, effective treatment of disease states to correct departures from health or at least minimize the further development of disease states; secondary intervention may cure disease, slow its progression, and prevent complications (secondary conditions), thereby minimizing impairments, activity limitations, and participation restrictions.¹³⁸ The goals of tertiary interventions are to reduce or eliminate long-term disability (including, according to the WHO formulation, impairments, activity limitations, and participation restrictions), minimize suffering due to health conditions, and promote the patient's adjustment to conditions that are not

¹³³A.M.Pope, Tarlov AR. (Eds.), Disability in America: Toward a national agenda for Prevention (1991); Washington, DC: National Academy Press.

¹³⁴D.T. Wade, De Jong BA, Recent advances in rehabilitation. BMJ (2000), p.1385-8.

¹³⁵Ibid.

¹³⁶World Health Organization. International classification of Functioning, Disability and Health ICF (2001), Geneva.

¹³⁷J. Mausner, S. Mausner & Bahn, Epidemiology - an introductory text(2nd ed.) (2006), Philadelphia: WB Saunders Co., 1985, p.87. See also Supra note 121.

¹³⁸ Ibid.

remediable.¹³⁹ Except the primary prevention, the secondary and the tertiary intervention are recognized by the CRPD.¹⁴⁰

To sum up, this model articulates, disability, social exclusion and marginalization of persons with disabilities are the result of complex interaction of all the aforementioned factors. Hence, it suggests there is a need of integrating various models to avoid these problems.

2.3 General Obligations Arising from the CRPD

By ratifying the CRPD, states undertake a legal obligation to implement it at the national level. Implementation is the act of putting into effect a decision, or providing practical means to accomplish something. In the context of international human rights law, it “means moving from a legal commitment, that is, acceptance of an international human rights obligation, to realization by the adoption of appropriate measures and ultimately the enjoyment by all of the right” in question.¹⁴¹

International human rights conventions and protocols that are issued under the auspices of the UN give rise to different types of obligations on the part of state party depending on the nature of the rights guaranteed, on the problems that it was meant to overcome or to prevent. These obligations are subject to general classifications depending on the duties imposed on states. The distinction between positive and negative duties is one of such categorizations. Negative duties imposed an obligation on the part of states not to interfere in the enjoyment of the rights. Thus all the states are required to do is refraining from interfering. Positive duties, on the other hand, impose on states the duty of taking positive measures to ensure the realization of the rights. Non-interference in the enjoyment of rights, thus, does not suffice to discharge the obligation of a state. The state is required to take specific measures to ensure the enjoyment of rights. It is questionable, however, which of the rights involve just negative duties the fact that most rights,

¹³⁹ Id.

¹⁴⁰ Article 25 (b) of the CRPD reads:” States Parties shall Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons.”

¹⁴¹ United Nations Economic and Social Council (2009). “Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights”, E/2009/90, available at: <www.un.org/Docs/journal/asp/ws.asp?m=E/2009/90> (Last visited March 10, 2012).

which initially were assumed to entail only negative duties, have come to be understood as requiring positive measures through time.¹⁴²

The other way of categorizing obligations of states under human rights treaties is between that of conduct and result. Obligations of conduct require states to act in a certain manner with the aim of achieving a certain end. However, such an obligation does not strictly oblige states to bring about a certain result. So long as the state is acting diligently in the manner stated by the convention, it will be considered, as having discharged its obligations despite the end the treaty aspires to achieve has not been realized. On the contrary, obligations of result gives states the liberty to choose the manner of achieving a certain end. But it strictly requires states to achieve a specified result.¹⁴³

One of such classifications, but which has been gradually become accepted in principle is what is commonly referred as “tripartite typology of states obligations“, (i.e., obligations to respect, protect and fulfill. Hence, for the purpose of convenience, this way of classification is dealt by contextualizing with the CRPD.

Accordingly, similar to other international human rights instruments, the CRPD imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfill. The obligation to respect the rights of persons with disability requires States parties to refrain from interfering directly or indirectly with the enjoyment of those rights stated under the convention.¹⁴⁴ This obligation corresponds more closely to the traditional conservative view, which argues that the obligation of the state is to abstain or “hands off “ from arbitrary intervention on the freedom and autonomy of the individuals from unjust interference by political authorities.¹⁴⁵ Both categories of rights have this negative dimension in a sense that they require the state to respect the autonomy of the individual in the exercise of his rights.

The obligation to protect requires States parties to take measures that prevent third parties including state actors from interfering with the enjoyment of the rights of persons with disability.

¹⁴²J. Rebecca, State Accountability under the CDAW, in Rebecca (ed): Human rights of women : National and International perspective(1994), p.232.

¹⁴³Ibid. See also G.G WinGill, Obligation of Conduct and Obligation of Result, in P,Alston and K.Tomasevsky(eds), The right to food,(1984),p.112.

¹⁴⁴This obligation is usually referred as negative obligations. Contracting parties are expected to hand their hands off.

¹⁴⁵Ibid

This is what is commonly known as more of positive obligations of states i.e., to take active measures towards the effective enjoyment of the rights.

The obligation to fulfill includes the obligations to provide, facilitate and promote those rights.¹⁴⁶ It implies that States parties should adopt appropriate legislative, administrative, budgetary, judicial and other measures to ensure its full realization. This obligation refers another positive obligation of states to take positive measures. This without doubt raises the question of resources and this is the place where developing states try to escape responsibility on the ground that their meager resources are not sufficient to live up this obligations as required. However, this argument is no more justifiable and it constitutes a violation of the convention. More importantly developing states can avoid this problem by applying international cooperation mechanisms.¹⁴⁷

Article 4 sets out the “general obligations” of States under the Convention.¹⁴⁸ Paragraph 1 lists a range of strategies which must be adopted in pursuance of the general obligation to ensure the full realization of all human rights by disabled people.¹⁴⁹ The first is the obligation to ensure and promote the realization of the rights recognized under the Convention. This obligation entails the obligation to respect and fulfill. The obligation to respect requires States parties to refrain from engaging in any act or practice that is inconsistent with the Convention, for example by avoiding measures that would prevent persons with disabilities from enjoying a given right. The obligation to fulfill requires States to take measures to provide for the realization of human

¹⁴⁶This obligation is usually referred as positive obligations.

¹⁴⁷Article 32 of the CRPD reads: 1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

A similar wording is found under article 2, 22 and 23 of ICESCR.

¹⁴⁸ See article 4 of the CRPD.

¹⁴⁹Id. art. 4 (1). The legal obligation to “ensure” the rights and freedoms contained in the CRPD means that the States Parties must achieve a given result.

rights, which include mainstreaming disability perspectives into all policies and programs;¹⁵⁰ introducing legislative, administrative and other measures to secure relevant rights for disabled people;¹⁵¹ and taking positive steps to promote the development and availability of universal design, of assistive technology and of professionals appropriately trained in the provision of relevant skills essential to the realization of human rights such as the use of assistive technology or mobility aids such as long canes, guide dogs and wheelchairs.¹⁵²

The CRPD reflects the full spectrum of civil, cultural, economic, political and social rights. While civil and political rights are amenable to immediate implementation by the State party, the Convention reaffirms the obligation for States to progressively implement economic, social and cultural rights.¹⁵³ The wording of article 4 (2) of the CRPD is similar to the language used in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).¹⁵⁴ The recognition that the full realization of economic, social and cultural rights might take place progressively over time is balanced by the requirement that measures are taken to the maximum extent of available resources and, where needed, within the framework of international cooperation.¹⁵⁵ Importantly, article 4(2) recognizes explicitly that while economic, social and cultural rights are subject to progressive realization, there are

¹⁵⁰Id. art 4 (1)(c).

¹⁵¹Id. art 4 (1) (a)-(b).

¹⁵²CRPD, supra note 2, art. 4 (1) (f)-(g).

¹⁵³The problem surrounding progressive implementation concerns prioritization of resources. Human rights instruments often contain language limiting application in relation to the financial capabilities of State parties.(for instance ICESCR at art. 2, para. 1 (States must undertake steps “to the maximum of its available resources”); CRC at art. 4 (“States parties shall undertake such measures to the maximum extent of their available resources”); Article 4 of the CRPD states that “each State Party undertakes to take measures to the maximum of its available resources”). In accordance with these textual limitations, States short of funds are more likely to implement rights that are either easier to achieve or are perceived as having greater utility or political cachet (see Michael, supra note 101). Conversely, States are less likely to promote rights where realization is thought either more challenging, less encompassing, or out of political favor. Thus, the caution expressed by the Independent Expert that allocation concerns should not be “used as a pretext for avoiding action.” U.N. Econ. & Soc. Council [ECOSOC], Common on Human Rights, Working Group on the Right to Dev., Study on the Current State of Progress in the Implementation of the Rights to Development, at para. 29, U.N. Doc. E/CN.4/1999/WG.18/2 (July 27, 1999).

¹⁵⁴Article 2, paragraph 1 of ICESCR states that “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” Article 4 of CRC states that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

¹⁵⁵Reference to international cooperation is further elaborated in article 32 of the CRPD “international cooperation”, which establishes the duty of States parties to support national efforts for the implementation of the Convention.

obligations that “are immediately applicable under international law.” The prohibition of discrimination, the obligation to take steps, the presumption of impermissibility of regressive measures and the satisfaction of minimum essential elements of the rights are all obligations of immediate effect under international human rights law.¹⁵⁶

The second obligation enshrined in the Convention is the prohibition of discrimination. Article 4 requires States parties to “ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination”. This obligation also entails the obligation to respect, protect and fulfill. The obligation to respect requires States parties not to engage in any *de jure* or *de facto* discrimination by making any distinction, restriction or exclusion on the basis of disability which has the purpose or the effect of limiting or excluding the enjoyment of any right under the Convention. The obligation to fulfill includes the duty to provide reasonable accommodation and to adopt specific measures that are necessary to achieve *de facto* equality of persons with disabilities. Importantly, the obligation to protect requires States parties to take all measures to eliminate discrimination also in the private sphere, by referring to “any person, organization or private enterprise.”¹⁵⁷

Thirdly, the Convention establishes a procedural requirement that applies to all decision making concerning persons with disabilities. This is the requirement to closely consult and actively involve persons with disabilities and their representative organizations.¹⁵⁸ In article 4(3) specific mention is made to the obligation to include and involve persons with disabilities in the development and implementation of legislation and policies to implement the Convention. Article 33 complements this obligation by requesting States to involve and ensure the participation of persons with disabilities and their representative organizations in implementation of the CRPD and other policies affecting disabled people.¹⁵⁹

Furthermore, Article 4(4) provides that the Convention should not, in any way, derogate from

¹⁵⁶For more elaboration of the concept of progressive realization in relation to economic, social and cultural rights: United Nations Economic and Social Council (2007). Report of the High Commissioner for Human Rights to the Economic and Social Council, E/2007/82, 25 June.

Available at: <<http://daccessdds.un.org/doc/UNDOC/GEN/N07/394/33/PDF/N0739433.pdf?OpenElement>> (Last visited February 24, 2012.)

¹⁵⁷CRPD, article 4, Para 1 (e).

¹⁵⁸It emphasizes the notion of “nothing about us without us”.

¹⁵⁹Id. art. 4 (3).

stronger obligations imposed on a particular State either by national or by international laws.¹⁶⁰ It would thus make it impossible for a State to argue that the CRPD set a lower standard than that set by the ICCPR or the ICESCR and thereby exempted them from satisfying the higher standard. Consistently with other human rights conventions,¹⁶¹ Article 4(2) sets out the principle of progressive realization for the economic, social and cultural rights dealt within the instrument, without prejudice to the need to implement the civil and political rights immediately.¹⁶²

As it is briefly discussed above, the Convention makes specific reference to the obligation of States parties to adopt legislative measures as a matter of general obligation. Also, in cases where no explicit reference to legislation is contained in the specific article, States might nonetheless be required to adopt legislation or other normative measures to implement the rights recognized in the Convention. Notwithstanding the degree of autonomy that States enjoy in deciding the strategies to implement the Convention at the national level, treaty bodies have consistently recognized that “in many instances legislation is highly desirable and in some cases may even be indispensable”, even if it is by no means exhaustive of the obligations of States parties.¹⁶³ The Committee on Economic, Social and Cultural Rights, for example, observes that “it might be difficult to combat discrimination effectively in the absence of a sound legislative foundation” and notes that in certain fields legislation may be indispensable.¹⁶⁴ This indispensability is true for the case at hand.

Similarly Treaty bodies in charge of monitoring other human rights treaties have often recommended States parties to undertake, upon ratification, an internal review of domestic legislation for compliance with the Convention. The Committee on the Rights of the Child in its General Comment No. 5, for instance, emphasizes particularly this requirement, by stating that

¹⁶⁰Id. art. 4 (4).

¹⁶¹Art. 4 of the Convention on the Rights of the Child; see also art. 2(1) of the International Covenant on Economic, Social and Cultural Rights; Office of the High Commissioner for Human Rights, *The Nature of States Parties Obligations* (Art. 2, par. 1), CESCR General Comment 3, ¶ 9, U.N. Doc. E/1991/23 (Dec. 14, 1990), available at: <[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En)> (Last visited March 03,2012)

¹⁶²CRPD, supra note 2, art. 4 (2).

¹⁶³United Nations Committee on Economic, Social and Cultural Rights (1990). “General Comment No. 3 Para 3: *The Nature of States Parties’ Obligations*”.

¹⁶⁴Ibid.

“a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance is an obligation” of the State.¹⁶⁵

In conducting a legislative review of compliance with the CRPD, given the comprehensive scope of the Convention, any meaningful review should not be limited to the traditional scope of disability-related legislation, but should extend to all areas of the law, civil and criminal law included.¹⁶⁶ The next chapter is dedicated to entertain this issue in the context of Ethiopia.

2.4 Conclusion

Historically, persons with disabilities have been among the most politically marginalized, economically impoverished, and least visible members of society. Many societies have viewed and continue to view this social exclusion as natural, or even a warranted consequence of the inherent inabilities of disabled persons.

There were legal instruments at the UN level addressing the issue of persons with disabilities but with very limited depth and comprehensiveness. Within the U.N., the elaboration of a disability-specific convention was first suggested in 1987, by Sweden and Italy. However, the idea met with considerable opposition. The principal reasons for having disability-specific convention are to make it visible, specific, effective, and comprehensive and to assure equality.

Traditionally, laws and policies concerning persons with disabilities were made under the charity and medical models. Laws and policies under these models regarded the person with a disability as requiring welfare or medical treatment or support to cope with his or her disability. The idea was that persons with disabilities should be cured, rehabilitated, or fixed. In essence, the medical model regarded disabled persons' impairments as the problem and, accordingly, laws and policies focused on training persons with disabilities to manage in a barrier-filled society. International instruments possessed vestiges of the medical model by assuming individuals are

¹⁶⁵United Nations Committee on the Rights of the Child (2003). “General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child”, CRC/GC/2003/5, para. 18).

¹⁶⁶United Nations General Assembly (2009). “Annual Report of the United Nations High commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities”, A/HRC/10/48, 26 January, para. 31. Available at: <www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf> (Last visited March 13, 2012).

disabled due to “special” medical problems that require segregated social services and institutions as remedies.

Critics of the medical model focused on its inherent narrowness, limitations, and its concept of the individual “experience” of impairment as being too simplistic. Furthermore, medical model programs that are institutionally based are also very costly.

The social model replaced the medical model. This model argued that disabilities were not caused by a person having an impairment but by the barriers created in society. It does not focus on disabled people as victims of their physiology, whether physical, cognitive or otherwise, nor as vulnerable, helpless individuals but as people who are disabled by attitudes, the environment, design, working patterns and by those individuals who see disabled people as unworthy.

While the social model successfully removed many barriers, the social model failed to require states to ensure that persons with disabilities could exercise all of their human rights. It mainly focuses on civil and political rights.

As a result this model suggests the realization of human rights for disabled people requires fundamental changes to be made to building and product design, to modes of transport, of communication and of information and service provision, as well as to the attitudes and expectations of the general population and of political leaders.

The third model is citizenship model. The introduction of community-based rehabilitation (CBR) into the mainstream of the health system and an extensive review of the literature shaped the construction of the framework of the citizenship model. It suggests the empowerment of persons with disability by using an integrated development approach.

The bio-psychosocial model integrates features of both the medical and social frameworks. Accordingly this model assumes disability is always an interaction between features of the person and features of the overall context in which the person lives. This model articulates, disability, social exclusion and marginalization of persons with disabilities are the result of complex interaction of all the aforementioned factors. Hence, it suggests there is a need of integrating various models to avoid these problems.

The effective implementation of the CRPD cannot be taken for granted. It will require individual States to agree to its ratification and then to consider how best to carry out their obligations and to take appropriate steps accordingly. Among these appropriate steps legislative measures are indispensable. To this end the CRDP requires States parties to undertake, upon ratification, an internal comprehensive review of domestic legislation for compliance with the convention.

The next chapter deals with the conflicting laws of Ethiopia with the CRPD those need to be repealed automatically.

Chapter Three

Conflicting Laws with the CRPD

Introduction

Sometimes legislations, whether enacted long years ago or currently, might be totally incompatible with the convention. These legislations are, *prima facie*, in contradiction with the convention. In other words these legislations are obviously against the interests of persons with disability. To put briefly these legislations do not contain any elements to treat issues of persons with disability. Rather they are obstacles to implement the convention effectively. Hence, since these legislations restrict various rights of persons with disabilities on the grounds of their disabilities, they are naturally in conflict with the Convention, so that need to be automatically repealed. Under this chapter these laws are addressed in depth.

Laws which partially fulfill the elements and criteria stated under the convention are fairly discussed in the next chapter. Hence, the difference between this chapter and the next is a matter of degree of compatibility. This is the principal reason to treat these chapters separately.

To this end the intention in this chapter is to show laws that are apparently in contradiction with the CRPD. The contradiction is straight forward and too visible. The discussion is addressed with some descriptions along with analysis.

3.1 Abolish/ Repeal Existing Legislation

Where legislation is in place, it is the State's responsibility to ensure its compliance with the standards and principles of the Convention. National legislation might be in some cases totally incompatible with the Convention. In other cases, existing legislation might not take into consideration all elements, with the result of only partially meeting the required standards.

Legislation that restricts the rights of persons with disabilities on the grounds of their disabilities is naturally in conflict with the Convention. At the national level, this will require the abolition

of various norms (including practices), such as legislation that allows persons with disabilities to be deprived of their legal capacity in favor of a guardian or other forms of substituted decision making¹⁶⁷; and legislation that permits the institutionalization of persons with disabilities on the grounds of their disability, alone or in conjunction with other factors¹⁶⁸; legislation that excludes persons with disabilities, from voting or being elected¹⁶⁹, or from participating in all legal proceedings as direct and indirect participants, including as witnesses or jury members¹⁷⁰. Also legislation excluding or limiting the rights of persons with disabilities to marry, to retain their fertility, to have full parental and conjugal rights¹⁷¹, is in violation of the CRPD.

In other cases, legislation might lack a specific substantive content which is required by the Convention. Legislative measures required by state party under art.4 (1) (a) & (b) of the CRDP needs to be in conformity with the convention in its content because the content of a given legislation greatly matters for its implementation. By way of example, the “paradigm shift” endorsed by the Convention needs to be reflected in the definition of disability contained in national legislation. Definitions that are based on medical conditions or types of impairments should be repealed. Prohibited discriminatory conduct in national legislation should include “all discrimination on the basis of disability”, in accordance with article 2 and 5 and not only discrimination against persons with disabilities.¹⁷² Also, the definition of discrimination might need to be revised to include denial of reasonable accommodation, in line with article 2, and it will need to set out factors to determine the content and limits of its duty to reasonable accommodation.

Ethiopia is party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD).¹⁷³ Being a party mandated that the substantive rights and principles of the Convention

¹⁶⁷Art.12 of the CRPD.

¹⁶⁸Id,Art.14

¹⁶⁹Id,Art.29

¹⁷⁰ Id,Art.13

¹⁷¹ Id,Art.23

¹⁷²The European Court of Justice, for example, has adjudicated in favor of a woman who claimed to have suffered “discrimination by association” when she was unlawfully forced out of her job for demanding flexible hours to look after her son with a disability. The European Court of Justice ruling recognized her situation to be covered by EU non-discrimination law and found her dismissal discriminatory (European Court of Justice, C-303/06, judgment (OJ) 223 of 30/08/2006).

¹⁷³Ethiopia ratified the CRPD on July 7, 2010.

should reflect on the relevant laws of the land. As it is fairly discussed in chapter two, in order to implement the CRPD adequately, States Parties will need to undertake, as article 4 clearly states it, a systematic revision of its current legislation in order to align it with the CRPD. One of the main legislative measures that need to be addressed is abolishing/repealing existing laws contrary to the CRPD.

This applies also to those States Parties whose legislation establishes that upon ratification of an international treaty, this treaty becomes part of the national legislation.¹⁷⁴ While in most of these countries the content of the international treaty, once ratified, would supersede any national legislation which is inconsistent with it, this does not replace the need to systematically abolish/amend any legislation, regulation or other norms which are not in line with the CRPD. Neither does it replace the need to in addition legislate laws that make the CRPD operational, in every area covered by the CRPD.

In addition, the review of the compatibility of the legislation with the CRPD needs to be ongoing, as often the initial process of harmonization will not have been done in a thorough enough way. This systematic revision includes both disability specific legislation as well as non-disability specific legislation which address the areas covered by the CRPD. This revision should also ensure that any inadequate and inappropriate terminology referring to persons with disabilities is changed. The CRPD does not prescribe how such legislation should be divided between disability specific and disability general legislation, but obviously a comprehensive revision of legislation needs to cover both.

Noting these general remarks let us set the place of our laws accordingly. There are good numbers of laws in our legal system those are totally in conflict with the CRPD and need to be abolished. In the following section some of them are fairly discussed.

¹⁷⁴There are arguments that support Ethiopia is a monist state according to art.9 (4) of the FDRE constitution which reads as: All international agreements ratified by Ethiopia are an integral part of the law of the land. Pursuant to this argument this article is a provision of incorporation.

a) Approach Followed by the FDRE Constitution

The position of persons with disabilities might be placed in constitutional documents in three forms.¹⁷⁵ First, they provide for provisions, which are aimed at achieving the purpose of prohibiting among the society in general. Second, they contain statements to the effect that every right and duty enshrined in the constitution applies to persons with disabilities, stating that discrimination is prohibited. Third, they incorporate specific provisions,¹⁷⁶ which address disability matters without derogating principle of equality, with respect to other constitutional provisions.”¹⁷⁷

The FDRE constitution falls under the first category. It guarantees the equality of all persons by the non-discrimination clause/section.¹⁷⁸ It is only by citing the catch-all phrase “other status” that persons with disability could argue the equality of their rights with their non-disabled peers. A glimpse reading of the provision divulges the failure of the constitution to give an explicit of recognition of the equality of persons with disabilities. A writer on the making of constitution and the entrenchment of the rights of persons with disabilities into constitutional documents recounted to this effect as follows: “To fail to prohibit discrimination on the ground of disability in any constitutionally entrenched charter of Rights and Freedoms which does prohibit discrimination on the ground of race, national or ethnic origin, color, religion, sex or age is tantamount to rejecting the fundamental humanity of disabled persons.”¹⁷⁹ The counter argument to this view might be that the provision by containing an illustrative listing ,as can be collected from the catch-all phrase “other status” , makes the above assumption a mere rhetoric.

However, it is important to raise at this juncture the question of what is the need of mentioning other discriminating grounds and ignoring disability? Similarly, what is the purpose of treating

¹⁷⁵Workie Taye, comparative study on the Legal status of Disabled persons with particular Reference to Ethiopia(1997,unpolished , Kennedy Library ,Addis Ababa university), p.29.

¹⁷⁶For instance, Thailand legislation reflects this understanding of disability-related issues. Section 30 of Thailand’s 1997 constitution makes specific mention of the right of disabled persons to be protected against discrimination and contains provisions concerning access, welfare and education for people with disabilities.

¹⁷⁷Ibid.

¹⁷⁸See Article 25 of the FDRE constitution which states:”All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status”.

¹⁷⁹Y. Peters, Twenty Years of Litigating for Disability Equality Rights: Has it made a Difference, (2004).

the issue of women and children (discriminating grounds based on sex and age) separately?¹⁸⁰ The obvious answer, the author believes, is they have got the significant attention. And, the obvious answer for failing to address the issue of persons with disabilities both at the nondiscrimination clause and separate provision is, rejecting the very equality of persons with disability, if not giving less attention to them. Furthermore, it is surprising not to give a due consideration while persons with disabilities are ‘big minorities’¹⁸¹ in Ethiopia as it is globally.

When evaluated in accordance with models of disability we discussed in the previous chapter, the FDRE constitution only addresses the *allocation of resources to provide rehabilitation and assistance to the physically and mentally disabled*.¹⁸² This shows the constitution clearly reflects both a mixing of a charity and medical model. However, as it is indicated without ambiguity under the CRPD persons with disabilities are not objects, but subjects of rights. This fundamental recognition, persons with disabilities are holders of rights, is rarely addressed constitutionally. Finally it is possible, based on the above arguments, to conclude that one could not find any provision under the FDRE constitution which clearly addresses the rights of persons with disabilities. Hence, it is the opinion of the writer that our constitution should be amended to expressly incorporate disability as one of the basis of discrimination as well as treat the issue with a specific provision.

b) The Right to Life/non-discrimination (art.551 of the criminal code)

Though it may seem clear on its face, the concept of “right to life” cannot be easily defined. Part of the difficulty in defining the concept of “right to life” is that the idea is intertwined with the question of when life begins. A “right to life” lacks meaning if it is not clear at what point in life that right begins to apply. Likewise, an assumption that the meaning of the concept of “right to life” is clear invites miscommunication.

¹⁸⁰The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art. 35 and 36, Proc. No 1, Neg. Gaz. Year 1, no. 1 [hereafter FDRE constitution].

¹⁸¹The phrase is used to indicate the number of persons with disabilities is significantly huge (according to WHO’s 2011 report, persons with disabilities are estimated to be 15% of the world’s population.)

¹⁸²See Art. 41(5) of the FDRE constitution.

Being part of this controversial issue, neither the Ethiopian civil code nor the CRPD¹⁸³ clearly indicate the beginning of life.

Despite the absence of cross-cutting provisions in the civil code, it is plausible to argue that a merely conceived child could be recognized as born¹⁸⁴ when his interest so demands, provided that he is born alive and viable.¹⁸⁵ In principle the criminal code provides undertaking abortion at any stage is prohibited.¹⁸⁶ Having this in mind there is a discriminatory provision in the criminal code which allowed a targeted abortion.¹⁸⁷

Since our laws continue to limit access to abortion generally while supporting a woman's decision to abort a fetus that has a disability, this reinforces the discriminatory notion that life with a disability is somehow less valuable or not as fulfilling as a life unaffected by a disability. However, as the disability rights movement has shown, life with a disability can be rewarding and worthwhile with the proper accommodations, support, and unbiased attitudes from other members of society.

According to this provision it seems Ethiopia has a “compelling state interest” in “preventing the procreation of children who will become a burden on the State.”¹⁸⁸ The provision is open to abuse since deciding the level of “curability or permanency”¹⁸⁹ of the disability is left to the medical professionals. Furthermore the word “deformity” mainly expresses the physical appearance of the child. The criterion is solely based on disability. It is not conjunction with other reasons like threat to the life of the mother. It is difficult to decide non-physical impairments. As a result a fetus with physical impairment is more likely to be aborted than a

¹⁸³Article 10 is not the only article of the CRPD that relates to the issue of abortion. Article 25's guarantee of equality in health care services includes services related to “sexual and reproductive health.” Though Article 25 does not provide any insight into defining the “right to life” by itself, the controversy surrounding its inclusion in the CRPD is informative of how some delegations perceive Article 10's “right to life” language.

¹⁸⁴Civil code, 1960, Art. 1, Neg. Gaz Extraordinary issue No.2 [hereafter civil code] . According to art.1 of the civil code the human person is the subject of rights from its birth to its death.

¹⁸⁵Ibid, art.2.

¹⁸⁶Criminal code, 2004, Art.545 (1), Proc. No 414, Neg. Gaz. Year 22, no. 22 [hereafter criminal code].

¹⁸⁷ Ibid; art. 551(1) (d).

¹⁸⁸This stand was taken by the North Carolina Supreme court in 1975 in *In re Moore*, 221 S.E.2d 307, 313 (N.C. 1976 (such decisions slowly became less common, however, and by the 1970s, women's reproductive rights had achieved constitutional protection.) See also art.35 (9) of the FDRE constitution.

¹⁸⁹The phrase is discriminatory among children with disability. Rather than appreciating disability as a difference it sticks with avoiding it through medication or killing the child. Furthermore the word “deformity” mainly expresses the physical appearance of the child.

fetus with non-physical impairments is. More importantly our technological backwardness increases the risk of aborting.

On the other hand there is a discriminatory provision in the criminal code regarding with women with disability. Pursuant to art. 551(1) (d) of the criminal code a pregnant woman with a disability may be obliged to commit abortion¹⁹⁰ since she does not have the capacity to decide by herself. The decision to abort the fetus is left to the medical doctor and her guardian.¹⁹¹ The assumption is that a woman with a mental or physical disability¹⁹² is unable to raise her child.

c) Legal capacity

Legal capacity refers to an individual's status and authority within a given legal system. It encompasses both passive rights¹⁹³ and active rights.¹⁹⁴ It reflects an individual's right to make decisions and have those decisions respected. As it is discussed in the previous chapter the CPRD follows a social model. As such, a social model approach to defining legal capacity focuses not on the individual's attributes or relative limitations, but rather on the social, economic and legal barriers a person faces in formulating and executing individual decisions, and the supports and accommodations they may require given their particular decision-making abilities. Article 12 of the CRPD 'Equal Recognition before the Law' recognizes the right to legal capacity, meaning that they have the capacity for rights, and the capacity to act,¹⁹⁵ on an equal basis with others without discrimination on the basis of disability. It represents a paradigm shift away from substituted decision making, inherent within guardianship systems, towards support-based alternatives¹⁹⁶ for persons with disabilities. Without recognition of legal capacity,

¹⁹⁰Art.551 (1) (d) of the criminal code provides for termination of pregnancy is not punishable where the pregnant woman, owing to a physical or mental deficiency she suffers from or, is physically as well as mentally unfit to bring up the child.

¹⁹¹ If a woman is judicially interdicted and a guardian is appointed, her guardian may decide in lieu her.

¹⁹²Other types of disability such as sensory and intellectual impairments are not mentioned.

¹⁹³Such as ownership or inheritance of property

¹⁹⁴Such as the rights to conclude contracts, administer property, appear in court as a party or witness, or give or refuse consent to medical procedures.

¹⁹⁵However, in relation with the discussions about the concept of capacity, it is often highlighted the draft of the Eighth Session (in the August 2006), before the final report, article 12 was accompanied by something at least unusual: a footnote page that said "In Arabic, Chinese and Russian, the expression "legal capacity "refers to" legal capacity for rights" and not the "capacity to act."

¹⁹⁶Where people do not have the requisite decision-making abilities on their own to understand information and appreciate the nature and consequences of a decision, even with accommodations and supports, they should retain their full legal capacity where decision-making can be managed through a 'supported decision making status.' This

other guarantees in the CRPD become meaningless, such as the guarantee of free and informed consent,¹⁹⁷ the right to marry,¹⁹⁸ and the right to political participation.¹⁹⁹

Therefore, the area most consistently highlighted as requiring legal measures for implementation has been legal capacity governed by CRPD Article 12.²⁰⁰ Article 12 requires revision of all areas of law that contain elements of competence and replacement of guardianship and other compulsory interventions with supported decision-making. The CRPD paradigm shift in these areas is fundamental. It means that persons with disabilities can no longer be subject to legal standards or procedures for deprivation of legal capacity, compulsory treatment or forced institutionalization or hospitalization. Instead, such practices must be abolished and replaced with supportive measures that respect the autonomy and integrity of persons with disabilities.

Laws restricting the exercise of legal capacity based on a test of decision-making abilities, whether generally or in specific areas such as financial rights and obligations (e.g. disposing of property, entering into a contract, opening a bank account, making will), family rights and obligations (e.g. marriage and parenting, divorce and disowning), voting or expressing a political or party preference (e.g. in an election, plebiscite or referendum), and decision-making in health and medical context or in relation to housing or services (e.g. whether to undergo a particular

involves a trusted individual or network of individuals assisting the individual in decision making. Support can be provided in a variety of ways including interpretation and plain language support, as well as assistance in representing the person to others who may not understand his or her ways of communicating.

¹⁹⁷See Article 25 of CRPD.

¹⁹⁸Id, Article 23.

¹⁹⁹Id, Art.29.

²⁰⁰Art.12 of the CPRD provides as:

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

treatment or enter a hospital, rehabilitation center or institution) are not in line with the purpose of the CRPD.²⁰¹

In this regard provisions under our civil code concerning legal capacity are contrary to the spirit of the convention. These provisions strictly prohibit persons with disabilities to undertake juridical acts. Our legal system declares the legal incapacity of persons with disabilities.²⁰² Similarly it authorizes interdiction or declaration of incapacity.²⁰³ It is always done by the application of third party.²⁰⁴ The worst thing is they are not allowed to apply for the withdrawal of their interdiction while their spouses, guardians, tutors, relatives, or the public prosecutor could do so.²⁰⁵ After the declaration a person with a disability who is declared incapable would be under plenary (full) guardianship.²⁰⁶ Our legal system do not provide for supported decision making.²⁰⁷ All the decision making aspect is exclusively reserved for the guardian and the family council. As a result they do not have an equal say in decision-making at the family and community levels. This substituted decision making is entirely contrary to the CPRD, which provides for supported decision making.²⁰⁸ Our laws are not devised in a way to apply to persons who do not object to having a guardian, only as an interim measure while requiring supported decision-making is developed for each individual.

Our legal system has clearly tilted towards recognizing and even constructing inequality for persons with intellectual disabilities, through rules that allow marriages to be voided, families to be broken, contractual obligations to be excused, wills to be negated, and decision making authority over fundamental liberty and property interests to be transferred to third persons.

²⁰¹ See also Articles 14, 19, 23, 25(d), 26, 29 of the CRPD.

²⁰² Ibid, Art 341.

²⁰³ Ibid, Art.351.

²⁰⁴ According to Art. 353(1) of the civil code an application for interdiction may be made by his spouse, or by any of his relatives by consanguinity or affinity, or by the public prosecutor.

²⁰⁵ Id, Art.377.

²⁰⁶ Id, Art. 359-367.

²⁰⁷ To ensure that supported decision-making works correctly and effectively as an alternative to guardianship models based on substituted decision-making, a number of safeguards should be implemented to prevent and remedy abuse and neglect. These safeguards should not overprotect people with disabilities, but must respect the inherent dignity, individual autonomy – including the freedom to make one’s own choices – and independence of persons. In fact the amount of assistance someone might need will depend on their personal circumstances. Support and involvement should be provided in such a way as to ensure that the person with a disability is still making the decision.

²⁰⁸ See Art 12(3) of the CPRD.

Similarly, the criminal law assumes that it is a conceptual imperative to stay its process and excuse its verdict, where a defendant's disability is deemed severe.

One may realize the socio-cultural context of the time (the time of drafting the civil code) may have justified that people with disabilities had to be overprotected to the extent of making them dependent on others even for their personal activities in life. However, these provisions are contrary to the interests of persons with disabilities. For the sake of convenience some very important selected rights are discussed below in relation to legal incapacity.

i. The Right to be Elected and Voting (Political participation)

The practice of excluding those perceived as lacking capacity to vote has a long history, and currently most democratic countries have capacity-related qualifications for voting. In Germany, for example, the Electoral Law flatly prevents some citizens from voting based on disability.²⁰⁹ Similarly, the Constitution of Thailand prohibits those “being of unsound mind or of mental infirmity” from voting.²¹⁰ The Constitution of Ghana provides that “every citizen of Ghana of eighteen years of age or above and of *sound mind has the right to vote.*”²¹¹ Section 16 of India’s 1950 Representation of People Act disqualifies a person from registration in an electoral roll who is of “*unsound mind.*”²¹² Restrictions on legal capacity may also deprive persons with disabilities of their right to be elected to public office.

Similarly our election laws clearly prohibit the right to vote and be elected. Art. 33(3) (a) of The Amended Electoral Law of Ethiopia prohibits a person from registration in an electoral roll who is proved “to be incapable of making decision due to mental disorder.”²¹³ Regarding the issue of holding an office through election, candidates are illegible for registration if they are mentally disabled.²¹⁴ The problem with these enactments is the qualification stated in both instruments is

²⁰⁹Article 13 states: “A person shall be disqualified from voting if (1) he or she is not eligible to vote owing to a judicial decision, (2) a custodian has been appointed not only through a restraining order to attend to all his or her affairs... (3) he or she is accommodated in a psychiatric hospital under an order pursuant to Article 63 of the Penal Code.”

²¹⁰Constitution of the Kingdom of Thailand, s. 100(4).

²¹¹Constitution of Ghana, art. 42.

²¹²Indian Representation of People Act, s. 16.

²¹³The Amended Electoral Law of Ethiopia Proclamation No. 532/2007, Neg. Gaz Year 13, No. 54 [hereafter electoral law].

²¹⁴Art.14(2), Directive on the Registration of Candidates Number 1/2009 (as amended).

arbitrary. These qualifications are open to abuse. The enactments do not state who is going to determine whether the restrictions are fulfilled or not. More importantly the procedure how the restrictions will be decided is not placed. All these ultimately hinder the political participation of persons with disability at all levels.

With regard to accessibility the election laws do not provide for accessible formats both for the candidates and voters. They do not oblige the election materials to be prepared in Braille formats. Similarly there should be sign language interpreters and speech recognizing software (for those who have not hands). More importantly the seat of the polling stations should be accessible to persons with physical disability (wheelchair users).

The recent decision by the European Court of Human Rights (ECHR) in the case of *Kiss v. Hungary*²¹⁵ is a step in the right direction, but does not go far enough to protect the rights of persons with mental disabilities.²¹⁶ In *Kiss*, the ECHR unanimously held that the automatic disenfranchisement of a person under guardianship is an unjustified violation of Article 3 of Protocol 1, and it acknowledged that removing the right to vote from all persons under guardianship failed the strict scrutiny required by the CRPD.²¹⁷

Similarly the Committee on the Rights of Persons with Disabilities stated that disability-based discrimination should be prohibited in all laws, “particularly those governing elections,” and that “urgent adoption of legislative measures to ensure that the right of persons with disabilities, including persons who are currently under guardianship or trusteeship, can exercise their right to vote and to participate in public life on an equal basis with others.”²¹⁸

Thus, abolishing the doctrine of competency as a standard for restricting the affirmative exercise of the fundamental right to be elected and voting would result in little burden to the efficient operation of the government and would significantly facilitate the equal citizenship of persons with disabilities. Where an individual can participate in the electoral process by selecting a candidate or position, the issue of competency should be irrelevant to the person’s right to vote

²¹⁵ *Alajos Kiss v. Hungary*, App. No. 38832/06 (May 20, 2010),

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ Concluding observations of the UN Committee on the Rights of Persons with Disabilities regarding Tunisia; Fifth session, 11- 15 April 2011, para. 13, 35.

or to be elected. This restriction should be placed in a very exceptional case where a person with disability is at a status of total dysfunctional.

ii. Marriage

Despite the general civil right to marry, established limitations still exist in our legal system which preclude disabled individuals with limited mental capacity from marrying, or at least that create grounds for voiding a marriage, because of their inability to fully comprehend the consequences of their commitment.²¹⁹ This right is placed on the gratuitous of the court to which an application is made for. If a person with a mental disability concludes a marriage without the authorization of the court the marriage would be nullified by the application of any interested third party.²²⁰ Such restrictions presumably serve to safeguard property interests of the partners with disabilities, although the non-disabled spouse often invokes allegations of incompetency to avoid the legal, economic, and spiritual burden of divorce.

However, competency is a weak justification for assessing an individual's readiness for formal emotional commitments or permanent familial bonds. Abolishing it as a standard for entering or voiding a marriage would impair few valid interests and enhance numerous others. Thus, persons with disabilities should not be restricted from affirmatively exercising the civil right to marry, solely as a result of the nature of their handicap or even its effect on their supposed understanding of the meaning of marriage.

As it is shown briefly above, the restriction on the right of marriage has a direct negative impact on the foundation of a family which is one of the fundamental rights recognized by the CRPD²²¹ and ICCPR.²²² It has been a common legal practice for long period of time precluding persons with mental disabilities from exercising their rights to procreate. Furthermore, the personal consent of the interdicted person's guardian shall be required for requesting a divorce or putting

²¹⁹This limitation is provided for both in the civil code and the family code. Art. 369 (1) of the civil code reads as: A person who has been judicially interdicted may not contract marriage unless he is authorized for that purpose by the court. A similar statement is found under art.15 of the family code which reads as: Any person who is judicially interdicted shall not conclude marriage unless authorized, for that purpose, by the court.

²²⁰See art.369 (3) of the civil code.

²²¹See art.23 of the CRPD.

²²²See article 23 of ICCPR.

an end to an irregular union.²²³ Our law goes to this extent limiting the activities, too personal, of persons with disabilities. Despite the personal nature of the acts the law rigorously governs them.

iii. Standing Trial (the right to sue or be sued)

Application of the CRPD to the penal and law enforcement systems is most closely related with Articles 12 and 14. Legal capacity in the CRPD is not limited to civil matters but comprises all aspects of life. Persons with disabilities, like all others, have duties to other members of society. Existing legal doctrines wrongly equate blamelessness with certain types of disability²²⁴ and result in greater harm as disability rather than criminal offence becomes the reason for social exclusion and control. It has devised numerous doctrines to preserve the conceptual integrity of the criminal law and to avoid trying or incarcerating persons with cognitive impairments. In order to ensure that defendants can participate in the process for assessing guilt and exacting retribution, it has constructed the concept of competency to stand trial. To promote the purposes of punishment, it has precluded a finding of criminal responsibility for defendants not capable of appreciating the wrongfulness of their actions.

This in turn reinforces attitudinal barriers to inclusion of persons with disabilities in communities and the practice of forced institutionalization. The same is true in our legal system. The criminal code provides for a person with mental disability is not responsible fully or partially for the crime he has committed.²²⁵ However, he would be subjected to undefined confinement²²⁶ in the guise of treatment or protection.²²⁷ It has a gross impact on the right to access to justice.²²⁸

Furthermore, courts have frequently taken solace in the notion of treatment to legitimate indefinite institutionalization in a rehabilitation facility, in lieu of term-limited incarceration in a correctional setting. But in each phase of the criminal process, disabled defendants remain

²²³See Art.378 of the civil code.

²²⁴It is usually directly connected with persons with intellectual disabilities.

²²⁵See Art.48 (2) and 49(1) of the criminal code.

²²⁶Id, Art,132. The phrase "undefined confinement" clearly shows the court has the discretion to determine his right to liberty. Once he is confined by the order of the court his other rights obviously will be at stake.

²²⁷Id, Art.129-131. The context of nonconsensual medical (usually psychiatric) interventions is usually under loss of liberty where length of detention is indeterminate and may depend on one's apparent compliance with arbitrary standards. The decision to institutionalize a person against his or her wishes (or without informed consent) represents a clear interference with that person's personal autonomy which amounts to detention.

²²⁸See Art.13 of the CRPD and art.37 of the FDRE constitution. Once a person with a disability who is committed a crime institutionalized the issue of justice is totally ignored.

segregated by a criterion of competency as the justification for more lenient though potentially more harmful dispositions. And the practical consequences of lengthy confinement in protection/treatment institutions often overshadow the benign motive of protecting individuals with serious disabilities from penal incarceration. Whenever the court orders the confinement of the defendant it is most likely against the free consent of him. This entails a Compulsory medical treatment and disability-based detention or institutionalization which amounts to a violation of physical and mental integrity and free and informed consent of the defendant.²²⁹ Large numbers of disabled people (particularly those accommodated in institutions) may be deprived of their liberty.²³⁰ Privacy matters that involve treatment issues implicate the most fundamental concerns of bodily integrity and subject the individual to potentially intrusive, permanent, and painful violations.

Similarly the absence of free consent has a direct relationship with cruel, inhuman or degrading treatment or punishment. CRPD Article 15 prohibits torture and cruel, inhuman or degrading treatment or punishment, including nonconsensual medical experimentation, and requires states to take effective measures to prevent persons with disabilities, on an equal basis with others, from being subjected to such treatment. All nonconsensual psychiatric interventions thus should be considered as a form of torture or cruel, inhuman or degrading treatment or punishment.

Surely, persons with disabilities have an interest in avoiding criminal trials, adjudications of guilt, incarceration, and particularly death sentences. But that interest is not related primarily to, nor is it justified by, any limitation in intellectual understanding. Instead, it is an interest in physical liberty that all defendants share.

Individuals with disabilities also have an interest in being, and being perceived as being, responsible citizens who are capable of honoring a social compact to respect the rights and privileges of all other citizens, or to bear the consequences for failing to do. Exceptions to social norms crafted to reflect their inability to respect those common rights or to be held accountable for their actions severely undermines that perception of responsibility. Furthermore, persons with

²²⁹ See art.12, 17, 25(d) of the CPRD.

²³⁰ Once a person with a disability is institutionalized every activity is determined by the rule of the institution.

disabilities should not be prohibited from standing as witnesses to give their testimony both in civil²³¹ and criminal proceedings.

iv. Other Juridical acts

➤ Will

It is known that will is one of the personal juridical acts. However, our legal system imposes a limitation on it with regard to persons with intellectual disabilities. A Person who is interdicted judicially has no the right to make a will.²³² Even wills made prior to his interdiction might be nullified where the court is convinced to do so.²³³ Hence it is placed on the discretion of the court to nullify the will made before his interdiction. It has a lot to do with privacy matters and bequeathing of the property.

➤ Contracts

Since legal capacity is one basic element for the formation of valid contract, a contract concluded by a person with an intellectual disability will be invalidated. As a result, any contract concluded by notorious insane and judicially interdicted persons is subjected to invalidation.²³⁴ Even some minor juridical acts may be impugned if they are in excess of his power.²³⁵ Our law does not give recognition for the validation of signature or thumb-mark of a blind person.²³⁶ The reason is that they are not capable enough to be bound by their words. Rather than putting a requirement of authentication by a notary or a judge it would be nice to prepare the contract in a format accessible to a blind person. As a result of this limitation it creates practical problems, for instance in the banking transactions and concluding contracts.

²³¹See art 1729(2) of the civil code.

²³²Art.368 (1) of the civil code states:” An interdicted person may not make a will after his interdiction has been declared.”

²³³Art.368 (3) of the civil code states:” The court may invalidate in whole or in part the will made by an interdicted person prior to being interdicted *where it is of opinion that the provision contained in such will are contrary to equity or have been affected by the state of health of the testator.*”

²³⁴See art. 373,1678 of the civil code.

²³⁵Id, art.373 (1). See art.371 (2) of the civil code which gives Courts the discretion to authorize a judicially interdicted person to do certain acts. It easy to guess those acts might be very minor in his life. Because very personal acts such as concluding marriage, making will, divorcing and disowning a child are not left to the judicially interdicted person.

²³⁶1728(3) states that;”The signature or thumb-mark of a blind or.....person shall not bind him unless it is authenticated a notary, registrar or judge acting in the discharge of his duties “This stiff requirement proves the assumption of the law is a person with a problem of sight could not bear the responsibility of undertaking various juridical acts without the authentication of those officials.

To sum up, a designation of incapacity has enormous practical, legal and psychological significance for the individual involved. Following the designation, the individual loses the freedom to make decisions for himself, at least in relation to the matter(s) to which the incapacity relates. Instead, others will decide for him on the basis of what they believe to be in his best interests. Depending on the circumstances, he may be told where to live, what medical treatment to have, what contracts he may enter, whether he may bequeath his property and whether or not he may marry or have a sexual relationship. Thus, his fundamental rights to liberty, to autonomy and to privacy will be significantly undermined by the designation of incapacity. Psychologically, too, a designation of incapacity may have an adverse impact on the individual who has to contend with both the practical limitations on his freedom and the stigmatizing effect of being labeled “incapable”. For these reasons, the way in which capacity is assessed must be monitored carefully in order to ensure that a designation of incapacity is made only where it is necessary and appropriate.²³⁷

d) Negative Terminologies

We know that language plays a critical role in shaping and reflecting our thoughts, beliefs and feelings. It should come as no surprise, then, that the way in which we refer to people affects the way they are seen by others and, indeed, the way in which they feel about themselves. Used over and over again, a convenient phrase is no longer an attempt to describe a person — it becomes a definition.²³⁸ For long period of time, inappropriate terms and catchphrases have been all too common in our society’s portrayal of people with a disability. People with a disability are still often referred to in depersonalized terms.

The terminology used to refer to persons with disabilities often reflects attitudes towards them.²³⁹ Attitudes can be the most difficult barrier people with disabilities face in achieving full integration, acceptance, and participation in society. Since words are a mirror of society’s

²³⁷Even in sever situations a person with a disability shall not be totally denied his capacity to decide on his life. At least a mechanism is needed to implement the principle of supported decision making. It is only as a last resort a substituted decision making could be put into place.

²³⁸A way with words, Guidelines for the portrayal of people with a disability.

²³⁹B. Doyle.; New Directions towards Disabled Workers’ Rights ,London and Worthington, Institute of Employment Rights, College Hill press (TU), (1994),p.34.

attitudes and perceptions, we should all put great thought into how we present information about people with disabilities, to help overcome negative attitudes and shape positive ones.²⁴⁰

The attitude towards them would be clearer when the terminology used is shown on the legal documents. Terminologies applied in a given legislation clearly indicate the stand of the state concerning them. As a result if politically appropriate terminologies are used in legislations, it is possible to say the state is, at least on enacting legislations, working on fulfilling its obligations.

Despite the fact that the terminologies matter, as stated above, most of the terms used in our legal system, especially in the civil code, are not politically correct and they are very offensive (especially the Amharic version is degrading) and discouraging.²⁴¹ In fact the choice of a term that is acceptable to the persons concerned is not without difficulties generally.²⁴² However, terms like “handicapped”, “wheelchair-bound”, “crippled”, “deaf and dumb”, “dwarf”, “deformed”,²⁴³ “epileptic”, “retarded”, “invalid”, “deaf-mute”, “infirm”, “insane”, “inmate”, feeble-minded are apparently degrading and there is no doubt to avoid these terms. One of the most damaging effects of portraying people in this way is that they are seen by others as being different and inferior.²⁴⁴ Unfortunately these degrading terms, at least the last five, are found in our civil code frequently.²⁴⁵ Therefore, a thorough review must be made to determine the scope of existing law touching on legal capacity, so that all provisions can be revised in compliance with Article 12 and other relevant articles of the CRPD.

e) The charity and Society proclamation and Disability Rights

While it is a common knowledge that persons with disabilities in Ethiopia are squat in poverty, the proclamation puts an obligation on the charities/societies to generate ninety person of their

²⁴⁰A Way with Words and Images, Suggestions for the portrayal of people with disabilities. See also B. Colin, (1992), Disabling imagery and the media: an exploration of the principles for media representations of disabled people, British Council of Organisations of Disabled People & Ryburn Publishing Limited, Halifax, UK.

²⁴¹Terminologies like Deaf-mute, infirm, insane, inmate are regularly used.

²⁴²International Labour Conference 86th Session 1998, Vocational Rehabilitation and Employment of Disabled Persons. (For instance, the term “disabled persons” is preferable in the English legal system while associations representing persons with disabilities prefer the term “persons/people with disabilities.”)

²⁴³This term is used under art. 551 of the criminal code.

²⁴⁴Supra note 238.

²⁴⁵See art. 339 ff of the civil code.

income from Ethiopians.²⁴⁶ Various NGOs had been involved in advocacy and socio-economic empowerment of persons with disabilities. However, this fund raising restriction might be an obstacle to promote human rights activities regarding with persons with disabilities²⁴⁷ as well as projects tailored for them.²⁴⁸ Similarly the restriction stated under the proclamation regarding the administration cost has a direct negative impact on providing reasonable accommodations for persons with disabilities. Since the charities or societies are obliged to allocate its expense an amount not exceeding 30 percent for its administrative activities,²⁴⁹ it is hardly possible to provide reasonable accommodations for persons with disabilities who are employed in the organizations.

Opposed to this proclamation the National Action Plan (NAP) recognizes the contribution of civil society organizations to the improvement of situation of persons with disabilities in Ethiopia stating that it is not only the responsibility of the government to work on this matter.²⁵⁰

However, because of the restrictions, this proclamation has a negative impact on the promotion of rights of persons with disabilities. Hence, Ethiopia is escaping from its obligation of refraining from taking measures which does not promote the realization of rights of persons with disabilities.²⁵¹ It is known that one of the common obligations expected from the state parties is the obligation to respect.²⁵² One ways of obligation to respecting is abstain from taking any measure which lags the realization of the right at hand. This measure, however, is an action

²⁴⁶Charities and Societies Proclamation ,2009, Art. 2(2), Proc. No 621, Neg. Gaz. Year 15, no. 22[hereafter CSP] (Art.2 (2) of the CSP reads as:..... However, they may be deemed as Ethiopian Charities or Ethiopian Societies if they use not more than ten percent of their funds which is received from foreign sources.)

²⁴⁷The proclamation allows the charities to engage themselves in the relief of those in need by reason of disability; the advancement of human and democratic rights and the promotion of the rights of the disabled (see art.14(2) (h),(j) & (l) of the CSP.)

²⁴⁸USAID/Ethiopia assures that a project designed to empower the life skill and employment skills of girls with a disability was not realized because of this proclamation. To support this project component, a sub-agreement was provided to the Ethiopian Women with Disabilities National Association (EWDNA) to mentor the girls with disabilities and ensure their inclusion in the project's activities. Unfortunately, this project component was discontinued due to the new CSP legislation, as EWDNA was no longer able to accept foreign funds.

²⁴⁹Art.88 (1) of the CSP states: "Any charity or society shall allocate not less than 70 percent of the expenses in the budget year for the implementation of its purposes and an amount not exceeding 30 percent for its administrative activities."

²⁵⁰National Action of Plan of persons with disabilities (2012-2021); Ministry of Labour and Social Affairs, April, 2012[hereafter NAP].

²⁵¹Art. 4(1) (d) of the CRPD obliges state parties to refrain from engaging in any act or practice that is inconsistent with the Convention.

²⁵²Negative (hands off) rights.

which is obviously regressive for the implementation of the CRDP. Let alone enacting laws contrary to the convention, state parties are obliged to refrain from practices and norms in conflict with the convention. It is equally important to consider the implication of other laws on the realization of the CRPD.

f) Labor Law/Employment

One of the encouraging measures taken by Ethiopia regarding persons with disabilities is their right to employment.²⁵³ The Right to Employment of Persons with Disability Proclamation is the only law of the FDRE that specifically and exclusively addresses disability rights, protects the right of persons with disabilities to employment, and prohibits discrimination.²⁵⁴

The other law which has an incentive provision to persons with disabilities is the civil servants proclamation.²⁵⁵ Despite this encouraging measure, there are still provisions in other laws which are against the interest of persons with disabilities specifically in the employment sector. The Labour Proclamation No 377/2003 puts persons with disabilities in a disadvantage position where a reduction of work force takes place.²⁵⁶ They are greatly affected by the reduction of the work force with the simple reason of their disabilities. According to the labour law, being a person with a disability is a cross-cutting criterion for reduction which clearly amounts to discrimination based on once disability. Reducing a person with a disability without using

²⁵³Right to Employment of Persons with Disability Proclamation No. 568/2008, Neg. Gaz. Year 14, no. 20 [hereafter Employment of Persons with Disability Proclamation].This proclamation is the first comprehensive law which addresses the issue of employment.

²⁵⁴Article 4 (1) of Employment of Persons with Disability Proclamation reads: 1/ Unless the nature of the work dictates otherwise, a person with disability having the necessary qualification and scored more to that of other candidates shall have the right without any discrimination:

a) to occupy a vacant post in any office or undertaking through recruitment, promotion, placement or transfer procedures; or

b) to participate in a training programme to be conducted either locally or abroad.

Similarly article 5(1) of the same proclamation reads: Any law, practice, custom, attitude or other discriminatory situations that impair the equal opportunities of employment of a disabled person are illegal.

²⁵⁵See art 13(2)of the civil servants proclamation no 515/2007 which provides for in requirement, promotion, and deployment preference shall be given to.....candidates with disabilitieshaving equal or close scores to that other candidates.

²⁵⁶Labour Proclamation No 377, Neg. Gaz. Year 10, no. 12, Art.29 (3) (d) . It is worth to note there should not be discrimination among persons with disabilities themselves. The law clearly indicates only those who are disabled by an employment injury in the undertaking are subject to reduction. It does not matter when the person become disabled, whether the person is disabled before engaging in the employment or disabled by an employment injury in the undertaking. Persons who are disabled by an employment injury in the undertaking and those who are disabled before getting in the labour force should be treated equally. As far as the injured person is fit and efficient to the position he shall not be subject to reduction in the work force.

objective criterion is a discriminatory act which is contrary to the CRPD. Hence, Ethiopia is obliged to enact job retention laws²⁵⁷ to protect persons who are disabled by an employment injury in the undertakings. Other issues regarding employment and reasonable accommodation are dealt with in the next chapter.

3.2 Conclusion

Legislation that restricts the rights of persons with disabilities on the grounds of their disabilities is naturally in conflict with the Convention. At the national level, this will require the abolition/repeal of various norms, such as legislation that allows persons with disabilities to be deprived of their legal capacity so that denying them to carry out various juridical acts; and legislation that permits the institutionalization of persons with disabilities on the grounds of their disability, alone or in conjunction with other factors; legislation that excludes persons with disabilities, from voting or being elected or from participating in all legal proceedings as direct and indirect participants; legislation that allows abortion of conceived child with a disability. Also legislation excluding or limiting the rights of persons with disabilities to marry, to retain their fertility, to have full parental and conjugal rights, is in violation of the CRPD. Accordingly there are various laws in our legal system which are incompatible with the CRPD. These incompatible laws are both substantive and procedural.

Legislations should not contain degrading terminologies to refer persons with disabilities. However there are good numbers of depersonalizing terms used in our laws especially under the civil code. As a result Ethiopia has the obligation to repeal these laws and make them in compliance with the CRPD.

Despite the fact that contracting parties are obliged from taking measures which have a retrogressive effect on the realization of the CRPD, Ethiopia has enacted a charity and societies proclamation which significantly restricts their fund raising and administration of budgets. Similarly the restriction imposed on the amount of the administration cost by this same

²⁵⁷Vocational Rehabilitation and Employment of people with disabilities, Report of a European Conference, Warsaw-Kanstancin Jeziorna, Poland (23-25 October, 2003.) These laws oblige employers to retain a worker who acquires a disability while in employment. This obligation applies where the worker's disability arises from a work related accident, injury or disease. Under this group of laws workers are encouraged to return to work, after retraining if necessary. In some cases employers are required to play an active role in the early detection of disability and the development of rehabilitation programmes.

proclamation has a great impact to provide reasonable accommodations to persons with disabilities who are working within such organizations. Hence, state parties are obliged to refrain from enacting laws which have retrogressive impacts for the promotion of rights of persons with disabilities.

Finally despite there are promising measures in promoting the right to employment, on the other hand, according to the labour law, being a person with a disability is a cross-cutting criterion for reduction which clearly amounts to discrimination based on once disability. Reducing a person with a disability without using objective criterion is a discriminatory act which is contrary to the CRPD.

The next chapter is dedicated to assess the compatibility of some laws with the CRPD. To this end gaps or overlooked issues are addressed. These laws do not have provisions which directly contradict with the convention. Some of them are totally ignorant of persons with disability. But they are not designed in accordance to the standards of the convention. This makes different the next chapter from the one at hand. The issues are mainly on reasonable accommodation, accessibility and other related issues.

Chapter four

Gaps (overlooked issues) in some laws

Introduction

In the previous chapter we have seen laws that are apparently incompatible with the convention. In this chapter laws that partially contained some elements of the convention are dealt. Similarly, where necessary, some proclamations that are totally silent regarding persons with disability are addressed. To that end the idea of reasonable accommodation and accessibility are the main themes to contextualize with the laws. The interrelationship between reasonable accommodation and discrimination is dealt.

Under the accessibility section those thematic issues are chosen because of the intensity of their inaccessibility and for the sake of convenience. It is not to make hierarchy between rights of persons with disability. Similar to the previous chapter some descriptions along with analysis are given under each sub sections.

4.1 Reasonable Accommodation

Implementation of rights of persons with disabilities is hardly possible without providing reasonable accommodation in any domain.²⁵⁸ Providing reasonable accommodation in any domain is all about abolishing the socially constructed barriers which preclude persons with disabilities from full participation. However, it is usually connected only with employment of persons with disabilities which is totally wrong. The same is true in the Ethiopian legal system. Reasonable accommodation is a new concept under Ethiopian legal system, so there currently are no provisions on reasonable accommodation in any legislation or regulations, but the right of employment with disability law.²⁵⁹ The only legal instrument incorporating the idea is right of employment of persons with disability Proclamation No. 568/2008. The definition provided by the proclamation is descriptive and it enumerates only the measures to be taken by the employer

²⁵⁸These domains are usually political, social and economical Medias.

²⁵⁹Art.2(5) of the Employment of Persons with Disability Proclamation states “Reasonable accommodation” means an adjustment or accommodation with respect to equipment at the work place, requirement of the job, working hours, structure of the business and working environment with a view to accommodate persons with disabilities to employment.

such as adjustment or accommodation with respect to equipment at the work place, requirement of the job, working hours, structure of the business and working environment.²⁶⁰

Opposed to this wrong assertion (reasonable accommodation is only for employment) the CRPD's definition²⁶¹, however, makes its scope all inclusive. Accordingly it is not reserved exclusively for the right to employment/work. Close reading of the phrase *.....all human rights and fundamental freedoms*²⁶² clearly shows its coverage is all encompassing. It entails reasonable accommodation should be provided in education, health, and other similar rights. Under the social model we have seen that it is the barriers constructed by the society that excludes persons with disabilities from utilizing their potentials. These barriers are obviously denying them a favorable condition which is failing to provide reasonable accommodation. It is a necessity to provide reasonable accommodation to ensure equality and eliminate discrimination. Otherwise it is superfluous to talk about equality and avoiding discrimination without providing reasonable accommodation. Furthermore it is mentioned three times under the CPRD.²⁶³ This is clearly a manifestation that reasonable accommodation is not exclusively reserved for work and employment purposes.

Whenever the issue of reasonable is discussed there might be the matter of resource limitation especially in the developing countries. But the CRPD has tried to indicate, both under the preamble and substantive provisions, the possible solution for this problem.²⁶⁴ This ideal solution is requiring international cooperation. International cooperation in accordance with article 32 of the Covenant is likely to be a particularly important element in enabling some developing countries to fulfill their obligations under the Covenant. As a result state parties have no a leeway to defend themselves mentioning economic constraints. Similarly developed countries

²⁶⁰See the above definition.

²⁶¹Art 2 of the CRPD states "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

²⁶² See the above definition.

²⁶³See the following provisions of the CRPD: art. 5(3)(equality and non-discrimination) provides: In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided;24(2)(c)(education) provides: Reasonable accommodation of the individual's requirements is provided);27(1)(i)(work and employment) provides: Ensure that reasonable accommodation is provided to persons with disabilities in the workplace.

²⁶⁴ See preamble (I) and article 32 of the CRPD.

and international organizations are required giving financial and technical assistances whenever requested by developing countries in national efforts for the realization of the purpose and objectives of the Convention.

Laying this as a ground some space is given to it with respect to employment and education in the context of Ethiopia. It is worth to note that there might be overlapping of ideas with the issue of accessibility. Both accessibility and reasonable accommodation have common characters.

4.1.1 The Right to Employment/work and Reasonable Accommodation

In the case of employment reasonable accommodation is any modification or adjustment to a job or change in the work environment that enables a qualified applicant with a disability to compete equally or a qualified employee with a disability²⁶⁵ to perform the essential functions²⁶⁶ of the position.²⁶⁷ The accommodation must be job related and not for personal use.²⁶⁸

The need for reasonable accommodation is determined on a case-by-case basis, taking into consideration the needs of the applicant or employee, his/her specific disability, the essential duties of the position in question, the work environment, existing limitations to the performance of a job function, the essential duties of the job, and the feasibility of the proposed accommodation or the reasonableness of the proposed accommodation.

The responsibility to provide reasonable accommodation does not end when the individual with a disability is placed in a position.²⁶⁹ Rather it is continual throughout his career as far as the individual is within the organization. It includes, but shall not be limited to making facilities readily accessible to and usable by a person with a disability, job restructuring, including part-

²⁶⁵ A qualified individual with a disability is an individual who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desire, and who, with or without reasonable accommodation, can perform the essential functions or such position.

²⁶⁶ Essential functions of the position are those job duties that are so fundamental to the position that the individual holds or desires that she/he cannot do the job without performing them. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic job description.

²⁶⁷ This definition found almost in similar words under the CRPD, American disabilities Act, and our proclamation of Right to Employment of Persons with Disability [hereafter employment proclamation].

²⁶⁸ For instance, eye glasses, hearing aids, prosthetic devices, wheelchairs, and transportation to work.

²⁶⁹ It is not a one- time activity.

time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, provision of readers and interpreters, accommodations for meetings, conferences, training and seminars, reassignment, as a last resort.²⁷⁰

According to the Employment of Persons with Disability Proclamation all employers are required to make reasonable²⁷¹ accommodation for a qualified individual with a disability unless it can be demonstrated that the accommodation would impose an undue burden²⁷² to the organization. Such a determination must be made on an individual basis. All alternatives will be explored to determine if the reasonable accommodation is the most effective one for both the individual with a disability and the organization. However, since the so called “undue burden” does not have a cross-cutting numerical requirement it is open for abuse. More importantly organizations with minimum capitals are more likely not to employ persons with disabilities by simply raising their capital capacity as a way out from their obligation. It is more likely to happen in Ethiopia since most both governmental and private organizations are small scale in their capital.

²⁷⁰Reassignment is a “last resort” form of reasonable accommodation that must be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position he/she holds, with or without reasonable accommodation. Reassignment is available only to employees, not to applicants. Reassignment may be made only to a vacant position. If the deciding official determines that no reasonable accommodation will enable the employee to perform the essential functions of his/her position, the deciding official must, in consultation with the employee, consider reassignment of the employee to a vacant funded position for which he/she is qualified. Reassignment to a vacant funded position may occur first within the geographical area where the employee is already employed. In the event a position cannot be found within the employee’s current geographical area, a suitable position may be identified in a different geographical area provided the employee has indicated the new geographical location is acceptable to him/her.

²⁷¹The reasonableness of the proposed accommodation means that the accommodation “seems reasonable on its face, i.e., ordinarily or in the run of cases,” “plausible,” or “feasible,” as defined by the Supreme Court in *U.S. Airways v. Barnett*, 535 U.S. 391 (2002). Furthermore, an accommodation must also be effective. An accommodation is effective if it meets the needs of the individual in question. In the context of job performance, this means that the reasonable accommodation enables the individual to perform the essential functions of the position. Similarly, a reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and be considered for the job. A reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy.

²⁷²Undue burden occurs if a specific type of reasonable accommodation causes significant difficulty or expense to accomplish. In this case, that particular accommodation does not have to be provided. Determination of undue hardship is always made on a case-by-case basis, considering such factors that include the nature and cost of the reasonable accommodation needed, the overall size of the program with respect to the number of employees, number and type of facilities, and size of budget; the type of operation, including composition and structure of the workforce. It is also known as undue hardship.

Furthermore the issue of undue burden is not only related to the expenses but also to the difficulties it may create. The phrase “considerable difficulty” stated under the proclamation reveals this fact. In this case it is also open for abuse since it is not put without ambiguity what amounts to considerable difficulty. In fact the proclamation seems to have the position of taking into account the size and structure of the business, and the number and composition of its employees.²⁷³

The employer is obligated to make an accommodation for a job interview, or for an existing job, when the applicant or employee has communicated his/her needs.²⁷⁴ All responsible officials involved in the application process should ensure that vacancy announcements explain what the application process involves and indicate to whom interested parties should make requests for reasonable accommodation if needed for the application process. Despite this fact the Employment of Persons with Disability Proclamation does not obliged employers to do so. As a result there might be a room to escape from providing reasonable accommodation for the application process in case there is a demand to do so.

With regard to privacy of the individual requesting reasonable accommodation keeping confidentiality is very critical. As a result all requests for and provision of reasonable accommodations must be kept confidential including medical evidences.²⁷⁵ In spite of the importance of this issue the Employment of Persons with Disability Proclamation says nothing.

²⁷³See article 2(6) of the Employment of Persons with Disability Proclamation.

²⁷⁴Because reasonable accommodation might be requested at the time of application.

²⁷⁵However, the deciding official may request medical information sufficient to substantiate that the individual has a disability and needs reasonable accommodation, but must not request medical documentation where:

- a. the disability and need for accommodation are obvious or otherwise already known; or
- b. the individual has already provided the organization/employer with sufficient information to document the existence of the disability and his/her functional limitations. When the standards for requesting medical information have been met (.a. and .b. above), the deciding official may request information or documentation regarding:
 - a. the nature, severity, and duration of the individual's impairment;
 - b. the activities that the impairment limits;
 - c. the extent to which the impairment limits the individual's ability to perform the activities; and/or
 - d. why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workforce. Furthermore, the deciding official has the right to request relevant supplemental medical information only if the initial medical documentation submitted did not clearly explain the nature of the disability, or the need for the reasonable accommodation, or did not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace, or, in the case of an applicant, assist him/her with the application process. If relevant supplemental medical information is requested, the deciding official must explain to the employee or applicant why the documentation already submitted was insufficient and articulate what medical documentation is

Finally it is important to mention at this juncture the problem that might be happened in relation to the criterion of “inherent requirement of the job/ unless the nature of the work dictates”.²⁷⁶ Based on this requirement persons with disability could be excluded from employment. By scrutinizing this phrase one could conclude that the Employment of Persons with Disability Proclamation does not considered as a discrimination when the inherent requirement of the job so demands. The problem with this concept, in the author’s view, is since it is left to the employer to determine so; employers might exclude persons with disabilities to escape from providing reasonable accommodation. The employer might argue that the exclusion is made based on this criterion not with a view to discrimination.

The last but not the least important point is the issue of rendering various incentives to organizations who employ and provide reasonable accommodations to persons with disabilities.²⁷⁷ Since the Employment of Persons with Disability Proclamation and other laws do not have a tax or other incentive mechanisms there is no pushing factor to institutions to employ significant number of persons with disabilities in their labour force. Therefore, putting various incentive measures in the legal frame work could be, in the writer’s opinion, one main instrument to increase the number of persons with disabilities in the labour market.

4.1.2 Education and Reasonable Accommodation

As it is mentioned somewhere else in this chapter education is a fundamental human right and it is a major instrument to empower persons with disabilities to utilize their potential both to themselves and to the community in which they are living in. To implement this fundamental

still needed. Finally if the employee or applicant is still unable to provide sufficient information in support of the request, the deciding official may request that the individual be examined by a healthcare professional of the organization’s choice and at the organization’s expense. Any such medical examination must be limited to determining the existence of a disability and/or the functional limitations that require an accommodation. Where a medical examination is warranted, the deciding official must explain to the individual that failure to agree to take the medical examination could result in a denial of the accommodation.

²⁷⁶See article 2(4) and 5(4) the Employment of Persons with Disability Proclamation

²⁷⁷For instance, providing financial aid to encourage employers to recruit disabled people with reduced work productivity; personal reader grants for blind or visually impaired persons needing assistance with reading at the workplace; workplace/equipment grants awarded in certain cases to employers to help them adapt company premises or equipment to the requirements of disabled employees; job interview interpreter grants which help towards the cost of providing an interpreter for people with hearing and speech impairments attending job interviews.

right it is mandatory to recognize inclusive education as a right. Unfortunately it is not recognized as of right in Ethiopia. More importantly, it has a lot to do with reasonable accommodation. Without providing reasonable accommodation it is hardly possible to think the implementation of inclusive education. As of inclusive education, reasonable accommodation is not recognized as a right both at the legislation and policy level in the education sector. As a result persons with disabilities are excluded from education in Ethiopia.²⁷⁸ The CRPD requires state parties to provide reasonable accommodation in this case.²⁷⁹ Providing reasonable accommodations in this case includes physical, technological and structural. The word “ensure” used in the CRPD requires state parties are obliged to show a specific result.

At the tertiary level, it seems, according to Higher Education Proclamation No. 650/2009, is recognized indirectly.²⁸⁰ Article 40 of this proclamation requires higher institutions that their facilities and programmes amenable to use with relative ease by physically challenged students.²⁸¹ However, this requirement is not mandatory. It is left to the discretion of the institutions. It has used the phrases like “to the extent possible,” “to the extent that situations and resources permit”.²⁸² More importantly it is limited only for persons with physical disabilities. It is not all inclusive and does not consider the diversity of disability.

4.2 Denial of Reasonable Accommodation as Discrimination

It is a common knowledge that a dominant understanding of antidiscrimination laws is that they compel the equal treatment of persons without regard to personal characteristics.²⁸³ From this flows the idea that laws and policies must be implemented and decisions made in a “color-blind” fashion in order to advance the cause of equal treatment.²⁸⁴ This understanding of equality comports with the Aristotelian notion that treating persons differently is justified only if there exists some difference between them that is relevant to the decision being made.²⁸⁵ It entails that,

²⁷⁸Supra note 345.

²⁷⁹See article 24(2) (c) and (5) of the CRPD.

²⁸⁰Higher Education Proclamation No. 650/2009, Neg. Gaz. Year 15, no. 64.

²⁸¹See article 40 of Higher Education Proclamation.

²⁸²Ibid.

²⁸³For example, race, sex, political view, social status, or religion.

²⁸⁴Robert Post, *Prejudicial Appearances: The Logic of American Antidiscrimination Law*, 88 Cal. L. Rev. 1, 11 (2000).

²⁸⁵J. Hasnas, “Equal Opportunity, Affirmative Action, and the Anti-discrimination Principle: The Philosophical Basis for the Legal Prohibition of Discrimination”, *71 Fordham L. Rev.* 423 (2002); M.Jack Balkin & Reva B.

for example in the case of employer, he must treat all applicants identically, except to the extent relevant differences justify different treatment. Indeed, this traditional understanding of antidiscrimination laws is reflected in the CRPD's and Ethiopian employment of persons with disability proclamation's prohibition of an employer's "limiting, segregating, or classifying" a qualified individual with a disability in a way that negatively affects the individual's opportunities or status, if the action is because of the individual's disability.²⁸⁶ This prohibition indicates that if a person is qualified to perform a job,²⁸⁷ then his disability should be irrelevant to an employer's employment decisions.

However, numerous commentators view the disability laws' requirements that in some instances individuals with disabilities receive different treatment in the form of accommodations as departing radically from the traditional understanding of civil rights laws.²⁸⁸ In essence, these commentators seem to reason that for a disabled person to be treated equally that person's disability must also be treated as irrelevant when it comes to an employer's expectations that the person employ conventional modes of job performance and conform to conventional employment policies. In other words, in this author's view, to treat an employee with a disability equally, the employer should ignore the disability and expect the employee to perform his job's requirements in a fashion identical to how non-disabled employees perform those requirements. An employer who allows the disabled employee to use an alternative mode of performance that accommodates his disability may do so as a favor to the employee, but is not required to do so by equality principles.

As a practical matter, it is fairly easy to see how pursuit of this "equality means identity" approach in the case of persons with disabilities would often lead to those persons being excluded from opportunities of various sorts. It is too easy to understand the exclusionary effect of identical treatment with regard to persons with disability. Despite this inescapable truth one

Siegel, The American Civil Rights Tradition: Anti-classification or Anti-subordination?, Yale Law Sch. Pub. Law Working Paper Series, Res. Pap. No. 34, (2002).

Available at: <[http:// papers.ssrn.com/sol3/papers.cfm?abstract_id=380800](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=380800)> (last visited June 01, 2012).

²⁸⁶Art.2 of the CRPD and art.2 (4) of employment Proclamation No. 568/2008. See also 42 U.S.C. § 12112(b)(1) (2000).

²⁸⁷Supra note 265.

²⁸⁸P. Steven Miller, "Disability Civil Rights and a New Paradigm for the Twenty-First Century: The Expansion of Civil Rights Beyond Race, Gender and Age," *1 U. Pa. J. Lab. & Emp. L.* 511, 515 (1998). (Stating, with respect to the ADA's individualized accommodations requirement, "nothing could be farther from the traditional civil rights model which holds that equality ensues when everyone is treated exactly the same").

may argue that both the CRPD and Ethiopian employment of persons with disability proclamation have failed addressing directly the “apparent conflict” between traditional civil rights principles of equality and the provision of different treatment to accommodate individuals with disabilities.

The result is that equality (identity) of treatment produces inequality of opportunity, while non-identical treatment (in the form of providing some accommodation) is necessary to allow the individual with a disability an equal opportunity to participate.²⁸⁹

Adherents of the minority group model of disability²⁹⁰ assert that this seeming contradiction demonstrates that the equality that justice demands for disabled persons is not simply a matter of decision makers always treating persons with disabilities identically to those without disabilities.²⁹¹ In so asserting, it is worthy to note, as mentioned repeatedly in previous discussions that most inequality suffered by persons with disabilities flows from social and physical structures and practices that serve to exclude them from the mainstream of society. In other words, for instance, even if an employer requires all employees to use an identical mode of performance, and if that mode of performance unequally burdens persons with a particular disability, then the employer has not treated an employee with that disability equally, notwithstanding the identical treatment.²⁹² Ultimately, if the inequality that the CRPD and Ethiopian employment of persons with disability proclamation seek to remedy flows not simply from humans’ discriminatory decisions, but primarily from physical and social structures’ unequally felt exclusionary effects, that inequality can be reduced or eliminated only by acknowledging and remedying those exclusionary effects.

Hence, if it is fairly understood that equal treatment for persons with disabilities does not

²⁸⁹M. Crossley, “Reasonable Accommodation as Part and Parcel of the Antidiscrimination Project,” 35 Rutgers L.J.861, (2004).

²⁹⁰According to the minority group model of disability, it is only because people with disabilities are a devalued and marginalized minority that society has deemed the exclusionary barriers that it has erected unremarkable, natural, and entirely acceptable.

²⁹¹A. Silvers, Formal Justice, in Anita Silvers et al., Disability, Difference, Discrimination: Perspectives on Justice in Bioethics and Public Policy 127 (1998) (observing that equal treatment is not necessarily always the same as identical treatment).

²⁹²For instance, if the door to a meeting room in a building accessible only by stairs is held wide open, does that mean that walkers and wheelchair users have been treated equally with respect to their ability to participate in the meeting? The answer is absolutely not.

necessarily consist of identical treatment, the next issue arises as to what variation in treatment will promote equality.

4.2.1 Variation of Treatment to Ascertain Equality

The reasonable accommodations mandated by the Ethiopian employment of persons with disability proclamation are mechanisms for refashioning the exclusionary features of a practice or place in order to allow the participation of people with disabilities; these barriers are not natural, but are instead “oppressive social arrangements that stifle talent, improperly elevating those with less natural ability over those more gifted.”²⁹³ If that is the fact, this writer argues, reasonable accommodations are not special benefits that advantage an individual with a disability in comparison to his non-disabled peers. The removal of barriers does nothing more than provide persons with disabilities with an opportunity to demonstrate whatever competence and talents they are endowed with, so that their strengths and talents might add to the community.²⁹⁴

Many might be quick to conclude that the physical or mental impairments of persons with disabilities constitute differences justifying different treatment. Scholars, however, reject the notion that such impairments should be viewed as differences justifying different treatment, because neither physical nor mental impairment is morally relevant to whether an individual should be able to participate fully in the mainstream.²⁹⁵ Instead, these Scholars look to the difference in the effects that conventional structures and practices have on disabled and non-disabled people.²⁹⁶ In this case, this writer would argue, the Ethiopian Employment of Persons with Disability Proclamation is designed to remedy the social barriers created by requiring every employer to provide reasonable accommodation unless doing so would bring undue burden.²⁹⁷ And if those structures and practices have an exclusionary effect on people with disabilities, then they are presumed to be unjust in producing inequality. Thus, the relevant moral difference between persons with disabilities and those without disabilities lies not in any differences in their mental or physical makeup, but in the divergence in how they experience existing structures and practices.

²⁹³Silvers, *supra* note 291, at 119. See also preamble (e) of the CRPD.

²⁹⁴See preamble (e) of the CRPD.

²⁹⁵Silvers, *supra* note 291, at 120.

²⁹⁶*Id.* at 128.

²⁹⁷*Supra* note 259.

So viewed, this relevant moral difference between disabled people and non-disabled people justifies different treatment, and an equality-centered understanding of justice demands that this different treatment be focused on ending disabled people's exclusion, rather than on attempting to compensate them for their impairments. Accordingly if practices are equalized, the unjust discriminatory effects of existing conventional structures and practices in Ethiopia can be mitigated and disabled peoples' ability to participate equally in society will be enhanced. Once practices are equalized (barriers are removed), then the identical treatment of persons with disabilities by human decision makers should be sufficient to ensure justice for persons with disabilities in Ethiopia.

Now it is time to return to the assertion that the accommodation requirement renders the CRPD and Ethiopian employment of persons with disability proclamation alien to other antidiscrimination laws. This assertion works for any law that requires provision of reasonable accommodation. But for the time being the discussion proceeds in line with the CRPD and the employment of persons with disability proclamation sine we do not have other laws which require provision of reasonable accommodation. The objection, mentioned previously, is that the CRPD and Ethiopian employment of persons with disability proclamation mandate the provision of special benefits to persons with disabilities, rather than simply requiring equal treatment, as antidiscrimination laws are typically characterized as doing.²⁹⁸ In other words, providing reasonable accommodations gives individuals with disabilities an advantage that non-disabled people do not enjoy; rather than leveling the playing field, accommodations tilt it in favor of people with disabilities.

However, it is possible to mention two articulations of the strong claim that failure to provide reasonable accommodate amounts to discrimination and providing reasonable accommodation is

²⁹⁸P. S. Karlan & G. Rutherglen, "Disabilities, Discrimination, and Reasonable Accommodation," 46 *Duke L.J.* 1 (1996); S. J. Schwab & S. L. Willborn, "Reasonable Accommodation of Workplace Disabilities," 44 *Wm. & Mary L. Rev.* 1197 (2003). See also M. Diller, "Judicial Backlash, the ADA, and the Civil Rights Model," 21 *Berkeley J. Emp. & Lab. L.* 19 (2000); L. Hamilton Krieger, "Foreword - Backlash Against the ADA: Interdisciplinary Perspectives and Implications for Social Justice Strategies," 21 *Berkeley J. Emp. & Lab. L.* 1 (2000). While The CRDP's definition of "reasonable accommodation" does not provide list of possible accommodations, our law Employment proclamation provides list of possible accommodations, including: an adjustment or accommodation with respect to equipment at the work place, requirement of the job, working hours, structure of the business and working environment (despite it is not clear whether these are exhaustive or not).

not to do favor for persons with disabilities. To begin with the first, one persuaded that our society is riddled with a range of barriers functioning to exclude persons with disabilities from participating in the social, economic, and political mainstream might make the claim that a legal requirement to make reasonable accommodations is simply an order to stop discriminating through the process of socially constructing disability. In other words, if our society, both collectively and in its individual members, has been erecting barriers that deprive disabled people of opportunities, that process itself can be seen as inherently discriminatory. In that light, an order to “stop discriminating” will require employers and other entities covered by the CRPD and employment of persons with disability proclamation not only to stop building new barriers, but also to dismantle barriers already in place. Just as an order to take down a “men only” sign over a train is viewed not as a special benefit for women, but as ending discrimination, so should the obligation to remove a less overt barrier to a disabled person’s participation be viewed.

It is the stand of this writer, maintenance of existing barriers is the equivalent of “real” discrimination; therefore, a legal obligation to provide accommodations removing those barriers is nothing more than an order to stop discriminating. This view is consistent with the CRPD’s defining “discrimination on the basis of disability” to include failing to provide reasonable accommodations. The same wording is used under the Ethiopian employment of persons with disability proclamation.²⁹⁹

Another, the second, more nuanced way to state the strong claim is to point out that our whole understanding of what constitutes an “accommodation” is premised on existing, conventional structures and practices in the workplace and other settings. Although the regulatory definition of a reasonable accommodation for CRPD and Ethiopian employment of persons with disability proclamation purposes focuses on modifications or adjustments to workplace structures and practices to enable a disabled person to perform a job, we know that the term “accommodation” is not inherently limited to something that disabled people seek, but instead means a thing supplied for convenience or to satisfy a need. Indeed, we can view existing workplace structures and practices as already accommodating the needs of most non-disabled workers. It is only

²⁹⁹Art.5 (3) of the employment of persons with disability proclamation reads: “When a disabled person is not in a position to exercise his equal right of employment opportunity, as a result of absence of a reasonable accommodation, such an act shall be regarded as discrimination.”

because we see people with disabilities as somehow different from the “normal,” non-disabled majority and because most workplaces have not been constructed or managed with the needs of a broad range of individuals in mind that we view a disabled person’s request for a workplace that enables him to do his job as a request for something “special.”³⁰⁰

Thus, it is tempting to view the accommodations requested by persons with disabilities as a request for “special” or “extra” benefits because it is understood that existing workplace structures as providing the appropriate baseline for what employers should provide.³⁰¹ But why we should accept the appropriateness of existing structures is by no means clear. Certainly, in Ethiopia, workplaces and most public settings historically have not been built to assure accessibility for people with a broad range of physical capabilities and limitations; instead a norm of unlimited physical ability is imminent in their structure.

In other words, our view of reasonable accommodations as something special for disabled people fails to appreciate that our society constantly accommodates the needs of the non-disabled majority. We just do not recognize those reasonable accommodations because of the ableist ethic that suffuses our society.³⁰² The society fail to recognize how much of the existing workplace scheme is built around the needs of the non-disabled,³⁰³ and we assume that this existing scheme is maximally productive just the way it is and that, consequently, any accommodation altering the dominant scheme will increase workplace cost and decrease productivity. Disability theorists challenge this assumption, asserting that while existing workplace practices and structures may suit the convenience of advantage the non-disabled majority, they are not in any sense “natural”

³⁰⁰Shifting perspectives exposes how a “difference” depends on a relationship, a comparison drawn between people with reference to a norm. And making this reference point explicit opens up debate It is possible to replace a norm that excludes with a norm that includes. Renovating the sidewalks to make them accessible to people in wheelchairs takes their needs as the norm but does not exclude others The way things are is not the only way things could be.

³⁰¹If society were built to be inclusive, there would be no extra costs involved in access. Therefore, viewing access as costly creates a hierarchy where non-accessible is ‘normal’ and ‘access’ abnormal.”

³⁰²A. Asch, “Critical Race Theory, Feminism, and Disability: Reflections on Social Justice and Personal Identity”, *62 Ohio St. L.J.* 391, 401-02 (2001).

³⁰³C. A. Ball, “Autonomy, Justice, and Disability,” *47 UCLA L. Rev.* 599, 645-46 (2000) (suggesting that able-bodied persons are dependent on many features of the existing social framework, such as the public provision of potable water and police protection, but that this dependency is not stigmatized like the dependencies of persons with disabilities).

and may impose real costs.³⁰⁴ From this perspective, people with disabilities who request the reasonable accommodations guaranteed by the CRPD and Ethiopian employment of persons with disability proclamation are simply demanding the same thing that non-disabled employees receive as a matter of course - the tools reasonably necessary to allow them to perform their job. Providing those tools without a second thought to non-disabled employees, but refusing the requests of employees with disabilities is indeed discriminatory.³⁰⁵ It is important to note that the issue of undue burden indicated both in the CRPD and employment of persons with disability proclamation might be abused.

Thus, the strong claim that a failure to provide reasonable accommodations is the equivalent of discrimination, as that term is used in other antidiscrimination laws, relies heavily on an appreciation of disability as socially constructed, as it is repeatedly mentioned previously. It asserts that conventional structures and practices discriminate by allowing access to non-disabled people, while excluding people with disabilities, and that employers and other actors who maintain those conventional structures and practices discriminate by continuing to employ these mechanisms of exclusion. There might be, however, potential counter arguments to this strong claim (the claim that failure to accommodate amounts to discrimination).

4.2.2 Counter Arguments

There are usually two arguments against the view that failure to accommodate amounts to discrimination. The first arises from the disconnect between the ordinary meaning attached to “discriminate” and the legal meaning that the CRPD and Ethiopian employment of persons with disability proclamation seek to assign to it. The dictionary definition of “discriminate” refers to distinguishing by discerning or exposing differences;³⁰⁶ thus, it comports well with the common understanding of discrimination prohibitions as requiring nothing more than refraining from making such distinctions.

If the strong claim’s deficiency lies in its failure to comport with popular understandings of “discrimination,” then perhaps some good old-fashioned consciousness-raising on the social

³⁰⁴J. L. Mashaw, “Against First Principles,” 31 *San Diego L. Rev.* 211, 222 (1994) (noting that, if everyone used wheelchairs, constructing buildings with low ceilings would produce both construction and energy savings).

³⁰⁵Legal scholars examining the nature of legally mandated accommodations more generally have also recognized that, at least in some instances, an accommodation mandate functionally parallels a prohibition of discrimination.

³⁰⁶See Encarta, Blacks law dictionary, Webster's Third New International Dictionary 648 (1993).

construction of disability could close that gap. After all, if we would object to a business that discriminates among whom it will serve by hanging a sign out front saying “no people in wheelchairs allowed,” should not we also object to a business that excludes people in wheelchairs by operating in a building accessible only by stairs? The exclusionary effects of the two methods - overt discrimination and the maintenance of a physical barrier - are similar.

But even if we recognize this similarity, our attitudes toward the operators of the two businesses are likely to be different, and this difference suggests another reason that many people, even perhaps some of those who acknowledge the social construction of disability, reject the strong claim that a failure to accommodate equals discrimination.³⁰⁷ In the familiar context of legal prohibitions on race or sex discrimination, findings of discrimination are tinged with moral opprobrium.³⁰⁸ An employer’s refusal to hire an applicant based on the applicant’s race or sex is broadly viewed as improper and morally blameworthy, so that the law’s prohibition of that discrimination coincides nicely with our moral judgments.³⁰⁹ By contrast, most people are less likely to view as morally suspect an employer’s failure to provide a reasonable accommodation requested by an employee with a disability. They might well applaud a decision to provide accommodations as morally praiseworthy, but view that decision as supererogatory, rather than morally required.³¹⁰ This coincidence with moral sensibilities gives civil rights laws prohibiting discrimination much of their moral authority, and many people may be reluctant to characterize actions that do not appear morally blameworthy as illegal discrimination.

A second counter argument to the strong claim that a failure to provide reasonable accommodation to a qualified individual with a disability is the equivalent of discrimination against that person is that any difference in the employer’s willingness to provide a needed tool is based not on the person’s disability, but on the “equipment’s” cost.³¹¹ In other words, one might object that a refusal to accommodate can be seen as discriminatory in the way described in the text³¹² only if the tool (accommodation) requested by the disabled worker is no more

³⁰⁷Crossley, *supra* note 289.

³⁰⁸ *Ibid.*

³⁰⁹S. R. Bagenstos, ““Rational Discrimination,” Accommodation, and the Politics of (Disability) Civil Rights,” 89 *Va. L. Rev.* 825, 837 (2003).

³¹⁰Crossley, *supra* note 289.

³¹¹ The idea of undue burden might, sometimes, be abused by referring to only the cost of the tools demanded.

³¹² See *supra* text accompanying notes 295-297.

expensive than the tools (“normal” workplace environment, policies, and practices) that the employer provides to non-disabled workers. If there is a discrepancy in cost, then the employer is not discriminating based on disability, but is instead simply making a rational business decision aimed at maximizing profits.³¹³

This argument, with the view of this writer, lacks force for this reason. While the CRPD and Ethiopian employment of persons with disability proclamation contain no exception for “rational discrimination,” they implicitly recognizes the potential costliness of some reasonable accommodations and limits the costs that an employer is required to shoulder in order to accommodate (i.e., stop discriminating against) an employee.³¹⁴ For example, employers are not obliged to provide an accommodation that the employer can show would impose an “undue burden” on the employer’s business operations.³¹⁵ Although “undue burden” provides only an indeterminate standard for limiting an employer’s reasonable accommodation obligation, the statutory text makes clear that expense is a factor in determining whether “undue burden” has been shown.³¹⁶ Thus, both the CRPD and Ethiopian employment of persons with disability proclamation mandates the removal of discriminatory barriers except when that removal is unduly costly for employers.³¹⁷

Ultimately, while the CRDP and Ethiopian employment of persons with disability proclamation define a failure to accommodate as discrimination and a sound theoretical argument supports the claim that the failure to remove socially imposed barriers to participation represents the maintenance of a discriminatory environment; some people undoubtedly will continue to object to the strong claim. But insisting that a failure to provide a reasonable accommodation is precisely the same as discriminating (as commonly understood) is not the only way to understand the CRDP’s and Ethiopian employment of persons with disability proclamation’s reasonable accommodation requirement as harmonizing with, rather than fundamentally diverging from, what other antidiscrimination laws require. Instead, if we understand reasonable accommodations as being crucial to the removal of barriers that have acted historically to

³¹³ Crossley, *supra* note 289.

³¹⁴ 42 U.S.C. § 12112(b) (5) (A) (2000).

³¹⁵ *Id.*

³¹⁶ *Id.* § 12111(10)(B) (defining “undue hardship” factors).

³¹⁷ See art. 2 of the CRPD and Art 2 of employment of persons with disability proclamation.

segregate persons with disabilities and to exclude them from the full benefits of participation in social, economic, and political life, then the CRDP's and Ethiopian employment of persons with disability proclamation's accommodation requirement is compatible with the philosophy and approach of other antidiscrimination laws.

Finally, our legal system does not oblige to provide reasonable accommodations for persons with disabilities in other areas which amounts to the violation of the CRPD. As it is stated at the beginning of this chapter the CRPD requires contracting parties to provide reasonable accommodations in all situations.

4.3 Legislation on Accessibility

It is a precursor of various provisions, enshrining accessibility as a means of ensuring equality as well as full and equal access to the enjoyment of all human rights. Accessibility is a new concept in a human rights treaty as well as in the Ethiopian legal system. It is incorporated under the CRPD both in the general principle in article 3 (f) as well as the stand-alone provision in article 9.³¹⁸ Considering this provisions, one may argue that accessibility is a key element of the CRPD and ensures access to and equal opportunities for the realization of other rights, including education, health, employment and recreation. Accessible format information and communications are the essential first step in obtaining details about any service or facility. For accessibility legislation to be effective, there are basic elements need to be part of it.³¹⁹

³¹⁸ Article 9 on Accessibility requires that states parties take appropriate measures to ensure access to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

³¹⁹ These basic elements are:

- a) Accessibility standards should be mandatory: Either legislated as law, or referred to by the law, and requiring infrastructure, services, communication, etc. to be accessible.
- b) Those aforementioned accessibility standards should be concrete, and translate accessibility into numbers and technical requirements that amount to accessibility
- c) The government should have a resort to sanctions against those who do not abide by accessibility standards.
- d) Persons with disabilities and organizations should have a resort to civil claims against violation of accessibility requirements.
- e) Accessibility is not only about ramps and elevators. Standards should address accommodations and technical requirements for all types of disabilities, including intellectual disabilities.
- f) States should put into immediate effect legislation and standards requiring that new infrastructure, and all services, are accessible.
- g) Legislation and standards must address existing infrastructure as well. Otherwise, with all the infrastructure already in place, no meaningful accessibility will be achieved. In this case gradual implementation is relevant and reasonable timeframes should be legislated for that. Also, a system of balances and exemptions will be more

Having these general principles in mind, some areas of accessibility are selected for discussion. As it is indicated in the introduction the thematic issues below are chosen based on their intensity of inaccessibility and for the purpose of convenience.

a) Access to Health Services

Persons with disabilities are likely to encounter difficulty in accessing health services on an equal basis with others.³²⁰ Evidence suggests that medical staff often, perhaps unintentionally, provide them with a reduced standard of service or care.³²¹ Similar reasons play a part in preventing many disabled people from fully accessing sex education, family planning advice and reproductive health services in Ethiopia.³²² As a result they might be more exposed to HIV/AIDS and other diseases than others. The growing available evidence suggests a strong interrelationship between HIV/AIDS and disability.³²³ First, people with physical, intellectual, mental or sensory disabilities are as likely, if not more likely, to be at risk of various diseases infection. They have insufficient access to diseases prevention information, are sexually active and therefore might engage in unprotected sex, are at increased risk of sexual violence, in particular women and girls with disabilities and have less access to treatment services.³²⁴

relevant here (rather than in new infrastructure). These should be kept to the narrowest possible, and – once again – should be defined in close consultation with persons with disabilities through their representative organizations.

h) Legislation to ensure that information and communication infrastructures and technologies as well as information and materials are universally accessible to persons with different types of disabilities (Braille, large print, plain language, visual information, inductive loop systems, etc..)

i) Make accessibility a condition for public procurement and the receipt of public funding. For instance, any organisation providing cultural services (or similar) should only be able to obtain public funding if it is accessible or in the process of becoming accessible within an established timetable.

j) Accessibility is also about linguistic accessibility in sign language: professional sign language interpreter services and provision of all information in a sign language and other accessible formats in all media.

³²⁰Disability Rights Commission, Equal Treatment: Closing the Gap. A Formal Investigation into Physical Health Inequalities Experienced by People with Learning Disabilities and/or Mental Health Problems (2006). See also A. Lawson, "The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?," 34 SYRACUSE J. INT'L. L. & COM. 563, 573 (2007).

³²¹Id. at 37-38. Since providing health care service to persons with disabilities is more time consuming, need support than persons without disabilities, medical staff are usually reluctant to provide the standard services.

³²²T. Shakespeare, et al., The Sexual Politics of Disability: Untold Desires (1996). See also B. Waxman Fiduccia, Current Issues in Sexuality and the Disability Movement, 18 Sexuality & Disability (2000), p. 172-73 .

³²³N.E. Groce, Global Survey on HIV/AIDS and Disability (2004). Available at: <<http://cira.med.yale.edu/globalsurvey>> (last visited May 06,2012).

³²⁴WHO world report on disability 2011. See also United Nations, UN Convention on the Rights of Persons with Disabilities, UN, Editor. 2008. H. Hancock, J., "Disability and HIV/AIDS - A Systematic Review of Literature in Africa", Journal of the International AIDS Society, 2009. 12(34): p.20-21. Available at: <http://www.jiasociety.org/series/hiv_aids_and_disability> (last visited May 06,2012).UNAIDS, Disability and HIV Policy Brief, UNAIDS, (Editor. 2009).

As a contracting party to the CRPD, Ethiopia is required to provide persons with disabilities with impairment-related health care and services³²⁵ including health-related rehabilitation.³²⁶ In addition, they must ensure³²⁷ that disabled people have access to the same range of health services as the rest of the population (including those relating to sexual and reproductive health) and that these are delivered without discrimination on the basis of disability.³²⁸ Such discrimination, in the provision of health and life insurance, must also be prohibited. Despite these obligations our health law (Public Health Proclamation No. 200/2000)³²⁹ has not a single provision regarding persons with disability, let alone treating the issue comprehensively. To provide an appropriate health service to persons with disabilities first there should be legal frame works. In the absence of legal frame works, how could they claim their right to health? It is to be noted that having only legislation is not an end by itself. The legislation should be translated into policies and programmes so that it could be implemented easily. Among other things, the legislation should address, are incentives for professionals who are engaged in this area, making accessible buildings of health stations/centers, and incentives to importers and manufacturers of medical equipments in this specific area. Similarly the Ethiopian health policy mainly focuses on prevention.³³⁰ As a result less attention is given to persons with disabilities. In fact it is important to note that it has mentioned that the issue of mental health will be given a due consideration.³³¹

The Ethiopian developmental social welfare policy has admitted that rehabilitation centers are not accessible to persons with disabilities simply because the availability of these services is much limited.³³² Even the rehabilitative services that are available are emphasizing institutional care; are costly so that the numbers of beneficiaries are very limited.³³³ The worst fact is their numbers are very limited and urban-centered which ultimately exclude the majority who need

³²⁵CRPD, art 25(b).

³²⁶Id. art 25(1).

³²⁷The legal obligation to “ensure” the rights and freedoms contained in the CRDP means that the States Parties must show feasible results.

³²⁸Id. art 25(a), (d), (f).

³²⁹See Public Health Proclamation No. 200/2000, Neg. Gaz. Year 6, no. 28.

³³⁰Health policy of the transitional Government, September 1993.

³³¹Ibid.

³³²Ministry of labor and social affairs; Developmental social welfare policy, 1999. See also National plan of action of persons with disability, 2012-2021 (hereafter NAP).

³³³Ibid

the services.³³⁴ In Ethiopia, buildings of health centers are not accessible to persons with disabilities.³³⁵ Similarly we do not have incentives mechanisms for professionals and suppliers of medical equipments. More importantly the available medical equipments are not accessible to them. This clearly shows less attention is given to persons with disabilities in this sector.

As it is mentioned above based on the policy, at the strategy level, it has a draft strategy only for mental health.³³⁶ This strategy relies heavily on the primary health care system³³⁷ to provide a consistent, sustainable, quality of integrated mental health services.³³⁸ As a result it is very specific and tailored only for mental health. It does not consider the diversity of persons with disabilities as well as it lacks comprehensiveness. A Plan for Accelerated and Sustained Development to End Poverty (PASDEP)³³⁹ and the Growth and transformation plan (GTP)³⁴⁰ do not give due consideration to persons with disability.

Therefore it plausible to conclude safely that health service in Ethiopia is hardly possible to be accessed by persons with disabilities. As result denial of this basic right might make them vulnerable for further disability.

b) Access to Education

We know that education is one of the best mechanisms to empower persons with disabilities. To that end, the CRPD obliges contracting parties to take measures to make education accessible to persons with disabilities.³⁴¹ Legally speaking, in Ethiopia, access to education to persons with disabilities is not recognized. Adequate domestic policy, legislative and financial frameworks are a prerequisite for States' meeting their obligations in relation to the right to education generally and inclusive education specifically. Ethiopia should consequently ensure adequate, focused and effective legislative, policy and financial frameworks. It is important here to

³³⁴Id.

³³⁵“የአካል ጉዳተኞች ፈተናዎች”፡ አዲስ አድማስ፣ ጳጉሜ 3/2004፣ ቅፅ 12 ቁጥር 660፣ ገፅ 9 እና 30.

³³⁶Federal Democratic Republic of Ethiopia Ministry of Health, national mental health strategy, 2011-2015.

³³⁷According to the strategy mental health in primary care refers to the provision of basic preventive and curative mental health at the first level of the health system. Care is usually provided by a non-specialist who can refer complex cases to a more specialized mental health professional.

³³⁸Ibid.

³³⁹A Plan for Accelerated and Sustained Development to End Poverty (PASDEP), Ministry of Finance and Economic Development (2005/06-2009/10).

³⁴⁰Growth and transformation plan (GTP), Ministry of Finance and Economic Development (2010/11-2014/15).

³⁴¹See article 9 and 24 of the CRPD.

emphasize that legislation is not an end in itself and the impact of legislative frameworks depends on the level of implementation, the sustainability of funding, effective monitoring and evaluation, as well as more detailed policy frameworks that ensure that legal norms are translatable into practical terms and programmes.

However, policy wise, even though its coverage is very limited, it is recognized at the policy level (by the education policy). The 1994 educational policy clearly states, as one of its specific objectives, “to enable both the handicapped and the gifted learn in accordance with their potential and needs.”³⁴² Even though it is one statement, it is very interesting the policy recognizes that persons with disabilities have a different potential and needs because there are various problems in the teaching methods. At school, lessons are designed for non-impaired people, using environments and teaching methods that are not suitable for some individuals with impairments. They are obliged to adapt themselves with the general education system. This integrated education system which Ethiopia has been exercising for a long time does not accommodate the needs of persons with disabilities.³⁴³ As a result they have been excluded from education by dropping-out and repetition.³⁴⁴ Rather than accommodating these students, schools are reluctant to enroll them.³⁴⁵

Accordingly it is necessary to have programmes and strategies in order to address their diversified needs to empower them so that they can exploit their potentials both for themselves and to the community to which they are living in. The best way of accommodating persons with disabilities in the general education system is inclusive education. The concept of inclusive education is contained in international instruments.³⁴⁶ The CRPD requires a state party to ensure an inclusive education system at all levels.³⁴⁷ As a state party to the CRPD, Ethiopia’s education

³⁴²Federal Democratic Republic Government of Ethiopia Education and Training Policy, April, 1994.

³⁴³For example a person with dyslexia has a learning disability only in a lesson structured for non-dyslexic students. If the lesson is taught in a way that suits people with dyslexia then they will not have a disability.

³⁴⁴Supra note 335.

³⁴⁵Action plan for special needs education strategy, FDRE Ministry of Education, 2006.

³⁴⁶It is incorporated implicitly in article 13(1) of the ICESCR and articles 23 and 29 of the CRC, and expressly, inter alia, in the Salamanca Statement and Framework for Action on Special Needs Education adopted in 1994 by the World Conference on Special Needs Education: Access and Quality and the recently adopted the CRPD, which establishes the obligation of States to ensure an inclusive education system.

³⁴⁷See article 24(1) of the CRPD.

policy, however, does not incorporate this concept.³⁴⁸ It should be incorporated and recognized as a right.

To be clear it is important to say some words on this concept. Inclusive education is based on the principle that all students should learn together, wherever possible, regardless of difference.³⁴⁹ It acknowledges that every student has unique characteristics, interests, abilities and learning needs and that those learners with special education needs must have access to and be accommodated in the general education system through a student-centred pedagogy.³⁵⁰ Inclusive education, by taking into account the diversity among learners, seeks to combat discriminatory attitudes, create welcoming communities, achieve education for all as well as improve the quality and effectiveness of education of mainstream learners.³⁵¹ In this way, educational systems should no longer view persons with disabilities as problems to be fixed; instead, they should respond positively to pupil diversity and approach individual differences as opportunities to enrich learning for all.³⁵²

In direct contrast with this there is the “special education” paradigm. Policies following this paradigm promote segregated education that leads to the development of separate educational systems: one for persons with disabilities, often referred to as “special schools”; and one for those without disabilities, or “mainstream” schools.³⁵³ The special schools, often based on the belief that persons with disabilities are uneducable and a burden on the mainstream educational system, often were - and remain - inflexible, non-individual-student specific and they fail to provide or even offer optimum results for their students.³⁵⁴ In addition, the practice of separating students with disabilities can lead to greater marginalization from society, a situation that persons with disability face generally, thus entrenching discrimination.

³⁴⁸Supra note 342.

³⁴⁹Salamanca Statement on Principles, Policy and Practice in Special Needs Education, para. 3.

³⁵⁰Ibid.

³⁵¹The Salamanca Statement on Principles, Policy and Practice in Special Needs Education of UNESCO followed in 1994, asserting that education for all could not be achieved without including all types of learners in one learning environment. Notably, its paragraph 2 states that “regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all.”

³⁵²UNESCO, Guidelines for Inclusion: Ensuring access to education for all, United Nations Educational, Scientific and Cultural Organization, France, (2005), p. 9.

³⁵³Vernor Muñoz: The right to education of persons with disabilities; Report of the Special Rapporteur on the right to education.

³⁵⁴Ibid.

Segregated education is inappropriate both on the grounds of effectiveness as well as from the perspective of respect for human rights.³⁵⁵ As to effectiveness, the author believes, it is not difficult to realize within the realm of education, States are increasingly realizing the inefficiency of multiple systems of administration, organizational structures and services, and specifically the lack of financial viability of special schools. That is why it has been suggested that inclusive education can be both cost-efficient and cost-effective.³⁵⁶ Hence inclusive education is mandatory for Ethiopia since it has an economic constraint.

There is a need to shift from an integrated or special education to an inclusive education with accompanying structural changes (for instance, organization, curriculum and teaching and learning strategies).

Practically, in 2006 the Ministry of education developed a strategy for inclusive education.³⁵⁷ However, it was developed only for primary education. Hence it does not include the secondary and tertiary education. According to the strategy both integrated and special education was not appropriate to meet the demands of persons with disabilities. It articulates students with special learning needs should be included with students in the regular schools. As required by the CRPD, in order to implement such an approach, Ethiopia should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers.³⁵⁸ However, there are only two institutions which give training to teachers.³⁵⁹ These institutions are Addis Ababa and Sebbeta teacher's College. Since their capacity is very limited the number of teachers they trained is insignificant.³⁶⁰ Furthermore, there is no guarantee of adequate remuneration for teaching and related staff. Opposed to this limited supply of teachers, there are a huge number of demands. The FDRE Ministry of Education has estimated there are 10%-20% children who have special needs.³⁶¹

³⁵⁵UNESCO (2005), op. cit., p. 9.

³⁵⁶Skrtic, quoted by S. Peters, T.M. (1991). "The special education paradox: equity as the way to excellence", *Harvard Educational Review*, 61 (2), pp. 148-206.

³⁵⁷Supra note 345.

³⁵⁸Ibid.

³⁵⁹Id.

³⁶⁰Id.

³⁶¹Id.

Similarly Ethiopia is obliged to “ensure that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.”³⁶² In the case of deaf children, for example, sign language should be recognized as a separate language to which the children should have access and whose importance should be acknowledged in their overall social environment. Ethiopia does not recognize sign language as a teaching language.

One of the positive measures taken by the strategy is it has identified duty-bearers and their responsibilities.³⁶³ However, the other problem of both the policy and the strategy is, they do not establish effective and transparent monitoring and evaluation procedures, including thorough provision for statistical and data collection and analysis. Similarly they do not make provision for an effective individual remedy, including judicial remedies and ensure an active role for national human rights commissions and disability ombudsmen. Furthermore, there is no a mechanism to guarantee adequate minimum and sustainable resource allocations, and seek international assistance where resources or knowledge are lacking.

Equally important point to be noted is it is required to provide reasonable accommodations³⁶⁴ to ensure that the learning environment is accessible for all students with disabilities. However our education policy does not address this issue. For further elaboration refer the above section on reasonable accommodation (section 4.1.2).

c) Access to Buildings

Every building designed to different purposes should be accessible to persons with disabilities both their exterior and interior parts. These include entrances, doorways and ramps; parking spaces; toilets, signs and displays; and recreation, such as parks and trails tailored to persons with disabilities.³⁶⁵ Religious institutions, recreational places,³⁶⁶ shopping centers

³⁶²See article 24(3) (c) of the CRPD.

³⁶³According to the strategy these duty bearers are Ministry of education, Regional education Bureaus, schools.

³⁶⁴See article 24 (2) (c) & (5) of the CRPD.

³⁶⁵Entrance lobbies should be large enough to allow free circulation of wheelchairs and double buggies. If the main entrance cannot be made accessible, a secondary accessible entrance should be provided, equipped with automatic door opener, a ramp, and a telephone. Inquiry counters should be at a height suitable for wheelchair users. Changes

/supermarkets,³⁶⁷ sport places (stadiums)³⁶⁸ are not accessible to them. In this regard, Ethiopian Building Proclamation No. 624/2009 has only a single provision.³⁶⁹ It only provides accessibility of steps and toilets which entail other accessibility issues which are mentioned previously are totally ignored. Since Article 36(1) of the proclamation states general terms it is open to abuse. As a result it should have to mention detail obligations so that it would not be open to escape from such obligations. More importantly the monitoring and supervising mechanism is not strong. That is why only 10% of public buildings are accessible to persons with disabilities in Addis Ababa.³⁷⁰ In other words, the remaining 90% of public buildings are not accessible to persons with disabilities. It is reasonable to conclude that the situation would be worse in other parts of the country. If buildings of religious institutions, educational sectors, justice sectors and health sectors are not accessible, obviously they are denied the services rendered by these institutions.

Similarly the Condominium Proclamation No. 370/2003 does not address the matter even with a single provision.³⁷¹ To avoid this severe problem there is a need to improve both the legal framework and the practice.

in level should be ramped (no too steep), or if unavoidable steps should be clearly marked and have handrails, while floor surfaces should be slip resistant. Passageways should be wide enough to allow double buggies and/or wheelchairs to pass. Lifts should be at entrance level, with a manoeuvring space in front of them, well lighted with buttons and signs in Braille and synthetic speech, buttons reachable from a wheelchair; and Automatic door opener reachable by a wheelchair user. The internal dimensions should be of a similar size to enable wheelchairs or double buggies to turn around. Lifts must be automatically self-levelling. Timing devices should allow sufficient time for manoeuvring, and the controls should be placed so that they can be operated from a seated position. Amenities such as access facilities, toilets and telephones should be clearly signposted and usable. Unisex disabled toilet facilities should be provided at entrance level. Sufficient parking spaces are needed marked with the international symbol and close to the entrance and Stairs and steps marked with a contrasting color.

³⁶⁶Induction loops should be provided in all theatres, cinemas, halls, meeting places and sports stadia. A clear, pictorial and visible sign should indicate the presence of the loop, and the loop should be switched on.

³⁶⁷Check-outs in supermarkets and stores should be wide enough for a double buggy or wheelchair. The conveyor belt should make the items accessible to people with mobility difficulties. Seats should be provided near the exit and the check-outs at a choice of heights. Automatic entrance doors and lifts to upper floors are essential. A lock up or safe area for leaving prams and pushchairs should be provided.

³⁶⁸Stadiums with tiered seats must include areas accessible to wheelchair users where they can sit with their companions.

³⁶⁹See Ethiopian Building Proclamation No. 624/2009, Neg. Gaz. Year 15, no. 31.(Art 36 of this proclamation states: 1/ Any public building shall have a means of access suitable for use by physically impaired persons, including those who are obliged to use wheelchairs and those who are able to walk but unable to negotiate steps. 2/ where toilet facilities are required in any building, as adequate number of such facilities shall be made suitable for use by physically impaired persons and shall be assessable to them.

³⁷⁰<www.ecdd-erhiopia.org> (last visited September16,2012). Fana broadcasting corporation/ news on 10 August, 2012.

³⁷¹See Condominium Proclamation No. 370/2003, Neg. Gaz. Year 9, no. 95.

d) Access to Transportation

Transportation and public domains need to provide seamless accessible paths of travel to enable equitable access to the built environment and services. The ability to access transportation is a precondition to the full enjoyment of many human rights by people with disability. Inadequate transportation to places of work, education, healthcare, recreation, polling stations and countless other venues constitutes a significant barrier to the enjoyment of human rights by people with disabilities, and consequently their full participation and inclusion in our communities and societies. International human rights law does not recognize a “right to transportation” per se. Rather; it guarantees the right to liberty of movement, which is elaborated in Article 12 of the International Covenant on Civil and Political Rights (ICCPR).

Transportation constitutes an important means of exercising the right to freedom of movement, and as noted by the Committee on Economic, Social and Cultural Rights, adequate “transportation is crucial to the realization by persons with disabilities of virtually all the rights recognized in the Covenant.”³⁷² Failure to provide accessible transportation that truly facilitates freedom of movement for people with disabilities not only inhibits their ability to fully enjoy human rights, it seriously undermines the very dignity and autonomy of people with disabilities.³⁷³

If lack of transportation can constitute a barrier to the enjoyment of other rights, what can operate as barriers to the provision of adequate transportation for people with disabilities? Similar to other instances, barriers in this case may include but are not limited to physical

³⁷²Committee on Economic, Social and Cultural Rights, General Comment No. 5: Persons with Disabilities, 9/12/94. E/1995/22, para 23 which reads: “Similarly, the failure of Governments to ensure that modes of transportation are accessible to persons with disabilities greatly reduces the chances of such persons finding suitable, integrated jobs, taking advantage of educational and vocational training, or commuting to facilities of all types. Indeed, the provision of access to appropriate and, where necessary, specially tailored forms of transportation is crucial to the realization by persons with disabilities of virtually all the rights recognized in the Covenant.”

³⁷³Such issues are addressed in the Quinn Degener report (for the UN Office of the High Commissioner for Human Rights) in the context of the concept of “liberty.” Specifically, that report asserts that “it is important to characterize inaccessible transport, an inaccessible built environment and an inaccessible communications environment as factors that detract to such an extent from the value of liberty that they call into question its existence for people with disabilities.” Gerard Quinn and Theresia Degener et al, Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability, (Office of the High Commissioner for Human Rights, 2002), p. 24.

barriers,³⁷⁴ informational barriers,³⁷⁵ legal barriers,³⁷⁶ attitudinal barriers/ structural barriers – such as the beliefs of transport operators and employees that people with disabilities do not or should not wish to utilize their services, or that it is sufficient to provide services for people with disabilities that are not of the same quality and functionality as services for the rest of the public. Ethiopian law of transportation (Transport Proclamation No. 468/2005) does not address appropriately the issue of persons with disability.³⁷⁷ As a result the public transport is not accessible to persons with disabilities in Ethiopia. Both the existing and the future importing cars are not required to be accessible to persons with disabilities. Furthermore there is lack of common understanding between institutions. The Ministry of transport and the Road's authority are not working together to make the transport system. It is not only vehicles that are inaccessible but also roads are not constructed according to the demands of persons with disability. Traffic lights are not sound sensitive while crossing-roads (zebras) are color sensitive. As a result persons with vision impairments could not identify them and consequently they are more vulnerable to traffic accidents than others which lead them to further disability. All this obviously is clear violation of the notion of the CRPD.

Despite the discouraging situations in the legislative measures there are promising activities in administrative measures. The Transport Agency has developed its own rules along with its survey of study to make public transport services to persons with disabilities. According to the Agency's study all public transport services are not accessible to persons with disabilities.³⁷⁸

Practically, there are some positive measures that are still underway especially in the city bus service. Some of the city buses imported recently are going to be accessible to persons with

³⁷⁴such as vehicle thresholds that do not permit entry by people with disabilities, sidewalks and streets that do not permit access to vehicles or independent mobility by people with disabilities, transport facilities (such as train and bus stations) that do not permit access by people with disabilities or that limit full access to services (including, e.g. restrooms, lounges) by people with disabilities.

³⁷⁵Such as signage or announcements (e.g. traffic light and zebra roads for blind persons) that cannot be easily understood by those with sensory or developmental disabilities, insufficient information regarding the nature and availability of transportation services.

³⁷⁶such as legislative prohibitions against people with disabilities operating or using certain kinds of transport, or laws that prohibit people with disabilities from obtaining and using legal papers (such as passports or other forms of identification) that may be needed to facilitate travel.

³⁷⁷Transport Proclamation No. 468/2005, Neg. Gaz. Year 11, no. 58. See also Ethiopian Road Authority Re-establishment Proclamation No. 80/1997, Neg. Gaz. Year 3, no. 43 (which does not oblige the contractors to make accessible roads to persons with disabilities).

³⁷⁸Transport Agency, A survey study on accessibility of public transport to vulnerable persons, (2011).

disabilities.³⁷⁹ These buses are equipped with “lifts.”³⁸⁰ However, the problem is that their numbers are very limited with the assumption of the number of persons with disabilities are few. The problem in this regard is they have to wait a long time to access these limited number of buses. The other positive measures stated under the Agency’s rules are giving priority to persons with disabilities in the lineup, selling tickets, and taking seats.³⁸¹ This is to be implemented by the transport operators.³⁸²

Finally it is important to be noted that the problem of not having legal frame work in this regard is it is not possible to oblige the concerned governmental organizations to undertake practical measures and make them responsible when they fail to do so. As a result it would be the good will of these institutions to undertake practical measures to make accessible the public transport services to persons with disability. As a result it is indispensable to have a binding legal frame work for the realization of this right. At the same time they will have the chance to claim this service as of a right.

e) Access to Justice

It is a broad concept, encompassing peoples’ effective access to the systems, procedures, information, and locations used in the administration of justice. Persons with disabilities have often been denied access to fair and equal treatment before courts, tribunals, law enforcement officials, prison systems, and other bodies that make up the justice system in their country, because they have faced barriers. Additionally, persons with disabilities have been discriminated against in terms of attaining positions as lawyers, judges, and other officials in the justice system.³⁸³ Such barriers not only limit the ability of persons with disabilities to use the justice system, but also limit their ability to contribute to the administration of justice to society and to the community as a whole. All the problems mentioned are true in Ethiopia. The situation is more discouraging in Ethiopia. Since we do not have the legal frame work to treat the situation, one could not expect the justice system is accessible to persons with disabilities in Ethiopia.

³⁷⁹Ibid.

³⁸⁰Transport Agency, A rule on accessibility of public transport to vulnerable persons, November, 2012.

³⁸¹Ibid.

³⁸²Ib.

³⁸³They may contribute their own part for the promotion of accessing justice for other persons with disabilities.

It is true that the justice system remedies inequality and discrimination. The ability to access justice is of critical importance in the enjoyment of all other human rights and in the fair and effective administration of justice. For example, a person with a disability who feels that she or he has been denied the right to work³⁸⁴ may wish to turn to the justice system to seek a remedy. However, if the justice system fails to accommodate her or his physical, communication, or other disability-related needs, and/or expressly discriminates against her or him, then clearly denial of access to the justice system also results in denial of protection of the right to work. Similarly, a person with a disability who has been the victim of a crime may wish to report the crime to the police and press charges against the offender.³⁸⁵ However, if she or he is denied physical access to the police station, clear communication with the police, or access to information that is understandable, then that person may not be able to exercise her or his rights as a victim.³⁸⁶

To be fully included in society, persons with disabilities need access to justice.³⁸⁷ As long as persons with disabilities face barriers to their participation in the justice system, they will be unable to assume their full responsibilities as members of society or vindicate their rights. Accordingly, there are numerous ways in which persons with disabilities are denied access to justice in Ethiopia. The following section discusses some selected areas of denials of access to justice for persons with disabilities.

³⁸⁴Art. 27 of the CRPD provides :

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
 - (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

³⁸⁵Id. arts. 15-6.

³⁸⁶See section IV below in this chapter.

³⁸⁷Id.

i. As Clients

Remedies for violations of human rights often require the intervention of lawyers. The expense of obtaining the services of legal counsel and legal processes often discourages those who cannot afford them from seeking just remedies. Availability, affordability, and adequacy are the three major challenges to obtaining legal assistance faced by persons with disabilities. A fourth barrier for persons with disabilities in Ethiopia might be the lack of knowledge by legal professionals of how to work with clients with disabilities, and a lack of knowledge of the legal concerns faced by persons with disabilities because our legal curriculum does not accommodate the issue.

In Ethiopia, in addition to the general access to justice issues confronting persons with disabilities, often poverty prevents these persons from utilizing the civil justice system because they simply cannot afford the services of a lawyer. In this case, the right to free legal aid is more important for persons with disabilities in Ethiopia because of their lack of knowledge of the legal system and their extreme poverty.³⁸⁸ That is the reason the 1975 Declaration on the Rights of Disabled Persons recognizes that a right to legal aid is indispensable.³⁸⁹

Furthermore, as it is mentioned elsewhere, with the absence of the curriculum, in law schools, lawyers are not trained on disability law or on how to work with clients with disabilities in Ethiopia. Most Ethiopian lawyers do not employ sign language interpreters to aid with deaf clients and they do not have materials for persons who are blind since there is no law that obliges to do so. They also have little experience working with disabled persons and minimal understanding of the so-called “disability etiquette,” which helps in addressing and interacting with persons with disabilities.³⁹⁰

³⁸⁸The right to free aid must also apply in civil matters.

³⁸⁹Declaration on the Rights of Disabled Persons, (Art. 11 of the declaration states: “Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.”) See also Access to Justice: Practice Note, United Nations Development Programme (Sept. 3, 2004). Available at: <http://www.undp.org/governance/docs/Justice_PN_English.pdf> (last visited May 03, 2012).

³⁹⁰D. Udell and R. Diller, Access to justice: opening the courthouse door. Available at: <http://www.law.stanford.edu/display/images/dynamic/events_media/Opening%20Courthouse%20Door%20-%20Brennan%20Ctr_1.pdf> (last visited May 30, 2012).

ii. Access to the Courthouse/physical Accessibility

It is known that one of the most obvious barriers to access to justice for persons with disabilities in Ethiopia is the physical barriers to the courts and other institutions of the justice system. Our courts are not comfortable for persons without disability let alone to persons with disability. This remains one of the most egregious problems. Courthouses, the symbols of the justice system, are often inaccessible in many ways. For example, inaccessibility includes: steps to and inside the courthouse, inaccessible witness chairs and defendant boxes, lack of technology to enable persons with disabilities to understand the proceedings,³⁹¹ prohibitions on animals in the courthouse despite the fact that they are service animals, and other elements of courthouse design. It is appropriate to mention here that there are exemplary court decisions in this regard.³⁹² Contrary to this exemplary court decisions, there is no any law in Ethiopia that obliges the courthouses to be accessible to persons with disabilities. As it is discussed previously, similar to other public buildings, courthouses are not accessible to persons with disabilities. Most court buildings are very old and deteriorated.

iii. As Defendants and Prisoners

Like all members of the community, persons with disabilities encounter the criminal justice

³⁹¹P. Blanck, A. Wilichowski & James Schmeling, "Disability Civil Rights Law and Policy: Accessible Courtroom Technology," 12 WM. & MARY BILL OF RTS. J. 825, 836 (2004). (He highlights the fact that assistive technology can, in addition to providing access to individuals with disabilities, enhance the experience and accuracy of proceedings to non-disabled individuals, such as: jurors, judges, and attorneys. He adds "This is particularly true when courtroom technology embodies concepts of 'universal design,' which enables all participants to engage meaningfully in the proceedings.")

³⁹²South African Government Information, Equality Court Victory for People with Disabilities. Available at: <<http://www.info.gov.za/speeches/2004/04022415461001.htm>> (last visited May 23, 2012) [hereinafter South African Government Information] (Esthe Muller, a South African lawyer and also a wheelchair user, filed suit under the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 against the Justice Department and the Department of Public Works because of the inaccessibility of the courthouses. Accordingly in September 2004, the South African Equality Court reached a final settlement in which the two government departments admitted that they had failed to provide proper wheelchair access and that this was a form of unfair discrimination against Ms. Muller and other people with similar accessibility needs. See also D. Reynolds, "Government Sets Date for All Courts to be Accessible", Inclusion Daily Express, Sept. 15, 2004, Available at: <<http://www.inclusiondaily.com/archives/04/09/15/091504sacourtaccess.htm>> (last visited May 20, 2012).

Similarly, In USA, Several individuals with disabilities who were paraplegic and who used wheelchairs filed action for damages and equitable relief, alleging violations of the Americans with Disabilities Act in terms of physical access to the courts. (*Tennessee v. Lane*, 541 U.S. 509, 512-14 (2004)). In this particular case the US Supreme Court found that when enacting this law, the U.S. Congress based it on extensive evidence of the "unequal treatment of disabled persons in the administration of judicial services and that this has persisted despite several state and federal legislative efforts to remedy the problem" The Court also "[recognized] that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion."

system as defendants. Some studies indicate that there is a significant percentage of the population of individuals with disabilities which are incarcerated in greater percentages than in the general population.³⁹³ In fact there is no data available or a study conducted in Ethiopia in this case. But it is not easy to assume there are a significant number of persons incarcerated in Ethiopia. Considering this fact individuals with disability who are accused and/or convicted of a crime also must be afforded accessible programs and facilities that meet their needs.³⁹⁴ To this end the priority measure to be undertaken is enactment of laws tailored to the issue. In this regard Ethiopia does not take any legislative measure yet. They are assimilated with persons without disabilities.

Ethiopian courts usually do not employ sign language interpreters to aid persons with hearing impairment defendants and they do not have materials for persons who are blind.³⁹⁵ Despite the fact that free legal council is indispensable to persons with disabilities, they have no access to this service in Ethiopia³⁹⁶ because of the reason that there is no law in Ethiopia that obliges the state to provide free legal service to persons with disabilities. The free legal service in Ethiopia is not rendered on the status of the person in charge rather it is provided usually depending on the

³⁹³See generally United Nations Office of Drugs and Crime, Handbook on Prisoners with Special Needs, at 80-81 (Criminal Justice Handbook Series 2009). Available at: <<http://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf>> (last visited May 20, 2012).

³⁹⁴Prisons must have accessible holding cells, including beds, benches, toilets, and bathing facilities. Indeed, the goal of rehabilitation and re-integration into the community after the sentence has been completed, demands that such programs and facilities are responsive to these concerns.

³⁹⁵The Human Rights Committee in its General Comment No. 13 recognizes the importance of communication in judicial processes in a language a person can understand: "Subparagraph 3 (f) provides that if the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defense." Clearly, this concept provides the requisite reasonable accommodation that allows a defense to persons who are deaf and use sign language to communicate with others, and to persons who are blind and cannot read standard print. However, Sign language is not yet recognized as a language in Ethiopia. The right of all persons charged with a criminal offence to be informed promptly and in detail in a language which they understand of the nature and cause of criminal charges brought against them, enshrined in paragraph 3 (a), is the first of the minimum guarantees in criminal proceedings of article 14. This guarantee applies to all cases of criminal charges, including those of persons not in detention, but not to criminal investigations preceding the laying of charges. The right to have the free assistance of an interpreter if the accused cannot understand or speak the language used in court as provided for by article 14, paragraph 3 (f) enshrines another aspect of the principles of fairness and equality of arms in criminal proceedings. Similar notion is reflected in its General comment 32.

³⁹⁶Despite Art 20(5) of the FDRE constitution provides: "Accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense."

amount penalty that might be imposed on the offender.³⁹⁷ As a result they are denied their fundamental right. Similarly they are denied the prison services because of the inaccessibility of the facilities. To sum up the issue generally, no attention is given to them in the criminal legal frame work of Ethiopia.³⁹⁸ As a result one could not find a single provision in this case both in the criminal code and in the criminal procedure code. Furthermore, the Federal Prisons Commission Establishment Proclamation No. 365/2003³⁹⁹ has totally ignored the matter. It is unfortunate the proclamation does not incorporate a single provision regarding persons with disability while there might be a significant number of persons with disability in prisons. Both the Criminal code and the criminal procedure code do not entertain the matter at hand. The criminal code talks only the proceedings of persons with mental illness.⁴⁰⁰

iv. As Victims of Crimes

It is a common knowledge that Persons with disabilities are more vulnerable as victims of crimes⁴⁰¹ from both strangers and persons who know them than persons without disability. However, the difficult experience does not end after the alleged crime is over, because often the police and other elements of the legal system treat persons with disabilities poorly when they seek to redress the wrong.⁴⁰² Police stations are often inaccessible, police do not know how to work with victims with disabilities, sign language interpreter services are not available, and materials in alternative formats for victims who are blind are not provided.⁴⁰³ Often the most serious barrier is that persons with disabilities are not believed or are not viewed as credible and

³⁹⁷See Art.20 (5)of the FDRE constitution (practically Miscarriage of justice is considered by the courts when the penalty that might be imposed is heavy).

³⁹⁸See Federal Prisons Commission Establishment Proclamation No. 365/2003, Neg. Gaz. Year 9, no. 90.

³⁹⁹Ibid.

⁴⁰⁰See article 129-133 of the criminal code.

⁴⁰¹Home and Sexual abuse and exploitation (Women and girls with disabilities – living at home or in institutions - are frequently exposed to sexual violence and exploitation because of dependency and inability to report to the police).

⁴⁰²S. Ortoleva, "Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System," *ILSA J.Int'l & Comp.L.*28. 317(2011).

⁴⁰³The International Criminal Court requires taking into account the needs of all victims, including persons with disabilities. Under Rule 102, on communications other than in writing, "[w]here a person is unable, due to a disability or illiteracy, to make a written request, application, observation or other communication to the Court, the person may make such request, application, observation or communication in audio, video or other electronic form." These provisions are preliminary steps in addressing how persons with disabilities should be treated in the context of the International Criminal Court.

reliable witnesses by police and prosecutors.⁴⁰⁴

There are a number of challenges for disability-based hate crime reporting. For instance, hate crimes against people with disabilities are often never reported to law enforcement agencies.⁴⁰⁵ The victim may be ashamed, afraid of retaliation, or afraid of not being believed.⁴⁰⁶ The same is true for other crimes like infanticides. The victim may be reliant on a caregiver or other third party to report the crime, who fails to do so.⁴⁰⁷ Or, the crime may be reported, but there may be no reporting of the victims' disability, especially in cases where the victim has an invisible disability that they themselves do not divulge.⁴⁰⁸ Ethiopia's legal system does not provide a mechanism for effective redress whenever there is a violation of rights which art.2 of the ICCPR obliges contracting state parties to do so.⁴⁰⁹ More importantly, when we scrutinize Art.13 of the CRPD, it only provides procedural and age-appropriate accommodations⁴¹⁰ which entails other issues are set aside. More importantly the Ethiopian legal system, does not devise an appropriate procedural accommodations for persons with disability as obliged by the CRPD to govern the matter in the police stations, prosecution offices and courts.

f) Access to Mass Media and ICT

Access to mass media applies both as users and subjects of it. This section discusses the issues on one hand as the audience and as activist on other hand. The media - television, radio, newspapers, magazines, the internet, social media and other forms - play an important role in

⁴⁰⁴See the movie with a title of "Blind witness" (the movie mainly shows how a person with visual impairments could identify criminals by their footsteps).

⁴⁰⁵Leadership Conference on Civil Rights, Confronting the New Faces of Hate: Hate Crimes in America 2009, Hate Crimes Against Individuals with Disabilities, available at:

[http:// www.civilrights.org/publications/hatecrimes/disabilities.html](http://www.civilrights.org/publications/hatecrimes/disabilities.html) (last visited May 20, 2012). It states that "Perhaps the biggest reason for underreporting of disability-based hate crimes is that disability-based bias crimes are all too frequently mislabeled as "abuse" and never directed from the social service or education systems to the criminal justice system. Even very serious crimes--including rape, assault, and vandalism--are too frequently labeled "abuse.""

⁴⁰⁶ Ibid.

⁴⁰⁷Id. Even some times the caregivers themselves commit these crimes.

⁴⁰⁸David; supra note 390.

⁴⁰⁹Art. 2(3)(a) of the ICCPR provides "Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. See also art.8 of the UDHR.

⁴¹⁰See art.13(1) of the CRPD provides: "States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages".

influencing public opinion and attitudes.⁴¹¹ The choice of words, images and messages can determine perceptions, attitudes and behaviors. It can also define what does or does not matter to individuals and the world around them.

How people with disabilities are portrayed and the frequency with which they appear in the media has an enormous impact on how they are regarded in society. While there are some disability-specific media programmes in Ethiopia, such as television news and radio programmes,⁴¹² disabled people rarely appear as part of mainstream programmes. When they do appear, they are often stigmatized or stereotyped, and may appear as either objects of pity or super heroic accomplishment and endurance. Including them in regular programmes on television and radio in addition to other types of media can help provide fair and balanced representation and helps to counter commonplace stereotypes that perpetuate negative perceptions of disabled persons. Portraying people with disabilities with dignity and respect in the media can help promote more inclusive and tolerant societies.⁴¹³

This has a multiple purpose. First, since as a group, they are often subject to discrimination or exclusion from basic services such as health, education, training and work opportunities. This leaves many disabled people and their family among the poorest⁴¹⁴ and most marginalized populations. Second, in Ethiopia, persons with disabilities often lack access to information about policies, laws and improvements in programmes and services that directly affect them. This knowledge gap perpetuates their exclusion from mainstream social, economic and political life. Promoting the inclusion of people with disabilities requires the recognition of all people as full members of society and the respect of all their rights. Inclusion also involves ensuring the participation of people with disabilities in all basic services available to the general population and the removal of barriers – physical, attitudinal, legal, regulatory, policy, communication – that prevent them from fully participating in society. What is more, promoting equality of

⁴¹¹It is one of the obligations of state parties to make awareness (art.8 of the CRPD). See also Office of the United Nations High Commissioner for Human Rights And Reports of the Office of the High Commissioner and the Secretary-General, Thematic Study: Enhancing Awareness and Understanding of the Convention on the Rights of Persons with Disabilities, A/HRC/10/48, 10th Sess., Jan. 26, 2009, 57 (2009).

⁴¹²There is a sign language news programme every Friday on ETV. In addition there are other programmes especially when the parliament meets. The radio programme is on Fanna broadcasting corporation every Wednesday.

⁴¹³Raising awareness is one of the obligations of the contracting parties to the CRDP (art.8). One of the modalities to undertake this obligation is via mass media.

⁴¹⁴The World Bank, available at; <<http://youthink.worldbank.org/issues/disabilities/>> (last visited May 10, 2012).

opportunities and access to services and information for people with disabilities is also critical to strategies for reducing poverty, a shared objective of the international community.⁴¹⁵

Similarly the blind and visually impaired have little access to newspapers and other forms of printed media in Ethiopia.⁴¹⁶ The press media is not prepared in Braille. Similarly Television services are not accessible to people who are deaf in Ethiopia.⁴¹⁷

To date digital media hold great potential for people with disabilities for this simple reason: digital text is not inherently visual, audible, or tactile, but rather may be rendered in many different formats, including large print, speech, video, and Braille. Digital technology can make it much easier to share information in multiple, or “redundant,” formats, so it is far more likely that an online user can get text when audio is presented and audio when visual information is presented.⁴¹⁸ People with mobility disabilities may also benefit, as voice dictation and on-screen keyboards can eliminate the need to physically flip through pages or type.

Newspaper and magazine sites—as well as the websites of news and entertainment shows—often create extra video clips that are available online only. More often than not, the video content on these sites is not accessible via closed captioning or via video description. Such barriers are

⁴¹⁵Media Guidelines For The Portrayal of Disability. Available at: <http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@ifp_skills/documents/publication/wcms_127002.pdf> (last visited May 15, 2012). See also Representation of people with disabilities in the Broadcast Media. Available at: <[http://www.nda.ie/cntmgmtnew.nsf/0/588299199D4C28C7802575F500296134/\\$File/Representation_of_People_with_Disabilities_in_Irish_Broadcast_Media_A_review_of_other_jurisdictions.pdf](http://www.nda.ie/cntmgmtnew.nsf/0/588299199D4C28C7802575F500296134/$File/Representation_of_People_with_Disabilities_in_Irish_Broadcast_Media_A_review_of_other_jurisdictions.pdf)> (last visited June 10, 2012). People with Disabilities Traditional Media: Progress and Setbacks. Available at: <<http://transition.fcc.gov/osp/inc-report/INoC-24-People-with-Disabilities.pdf>> (last visited June 10, 2012).

⁴¹⁶It is possible to provide service that transmits newspaper text in a computer format that is accessible to “screen readers” that convert text to speech.

⁴¹⁷There is no law in Ethiopia that requires TV sets and other video programming devices to offer interfaces that allow people who cannot adequately see on-screen menus to receive audio prompts to help them select programming, change channels, and activate other controls.

⁴¹⁸Many websites offer material in both audio and visual formats but, crucially, even when they do not, new technologies, such as screen readers, can make sites accessible to people who are blind or visually impaired. This technology can translate written text into audio. There also is technology available that makes it possible for deaf-blind people to read Internet text through a Braille terminal connected to a screen reader. Such adaptive technologies have enabled many people with disabilities to become early adopters of digital technologies. But while many websites are screen-readable, many are not—or they have subsets of content that are not. For people with disabilities to fully benefit from the web, content needs to be coded in ways that are compatible with assistive technologies. If a link to an article is depicted only graphically, without an accompanying text label or “alt tag” that can be voiced by a screen reader, then its content is effectively inaccessible to a web surfer who is blind. Similarly, if an article on a web page lacks organizational structure, such as section and article headings, it can become impossible for an assistive technology user to find the main content amidst surrounding, extraneous information, such as advertising or external links.

compounded when the controls used to operate the video players, typically embedded in their web pages, are also not accessible to people with low or no vision. People with disabilities seeking to obtain news and information via their mobile smart phone also confront difficulties.

These and other problems can be avoided only when accessibility legislations, which specify features that web creation software should have in order to produce accessible content, are enacted. When followed, these legislations would enable people who are blind to receive synthesized speech output using text-to-speech technology to get access to email, website content, SMS messages, and just about anything on the internet that is in text. But Ethiopia does not have a law which governs this issue.

In short, there remain significant barriers to new media for people with disabilities in Ethiopia. New technologies have tended to neglect this community in Ethiopia because developers and manufacturers are not forced by laws to respond through compliance with persons with disabilities. Since new media technology may have inherent advantages that make it more disability friendly—policymakers in Ethiopia should address accessibility issues and companies both in the country and abroad incorporate accessible features into the designs of their products.⁴¹⁹ However, our Communications Act (Telecommunication Proclamation No. 49/1996) does not require⁴²⁰ telecommunications equipment and services to be usable by people with disabilities.⁴²¹

Similar to the communications act, both the broadcast and the media and information proclamations (Broadcasting Service Proclamation No.533/2007 and Freedom of the Mass Media and Access to Information Proclamation No. 590/2008) do not provide even a single provision regarding the accessibility of those services to persons with disability.⁴²² Ethiopian

⁴¹⁹ Id.

⁴²⁰This requires manufacturers and service providers to identify accessibility barriers and ensure the usability and compatibility of equipment and services throughout their product design, development, and fabrication processes.

⁴²¹Telecommunication Proclamation No. 49/1996, Neg. Gaz. Year 3, no.5. See also Telecommunications (Amendment) Proclamation No. 281/2002.Telecommunication Services Council of Ministers Regulations No. 47/1999. Ethiopian Telecommunication Corporation Establishment regulation /Amendment/ council of Ministers Regulation No. 93/2003. Ethiopian Telecommunications Corporation Establishment Regulations /Amendment/ Council of Ministers Regulations No. 99/2004.

⁴²²See Broadcasting Service Proclamation No.533/2007, Neg. Gaz. Year 13, and no.39. Freedom of the Mass Media and Access to Information Proclamation No. 590/2008, Neg. Gaz. Year 14, no. 64.

Radio and Television Agency Establishment (Amendment) Proclamation No, 73/1997 has said nothing in this regard.⁴²³

Generally, there is no considerable momentum and activity in Ethiopia at all levels (legislation, policy and practice) and involving all actors (legislators, broadcasting regulators, broadcasters and disability organizations), geared to improving the representation of persons with disabilities in the media.

We do not have disability legislation which creates obligations for the media on accessibility and the representation of persons with disabilities. We have no legislative obligations outside of internal employment equality obligations that could impact either directly or indirectly on the representation of persons with disabilities.⁴²⁴ There need to be a legal obligation to improve the representation of people with disabilities in the media through an inclusive media outlet that defines all people by their talents and the quality of their stories, rather than by disability.

Together with the media, Information and Communications Technology (ICT) has the potential both to enhance access for people with disabilities and to contribute to creating barriers. Barriers have existed and still exist today with telephones, television, the Internet and other information technology in Ethiopia.⁴²⁵ It is important to note that people with disabilities have many different accessibility needs and that there are different ways to make technology accessible and that new accessibility needs emerge as technology changes.

Many of persons with disabilities have no access to basic means of communication and accessing information both in rural and urban areas in Ethiopia.⁴²⁶ This is because of its format, in the case of people with sensory impairments, or because of its complexity, in the case of people with

⁴²³See Ethiopian Radio and Television Agency Establishment (Amendment) Proclamation No, 73/1997, Neg. Gaz. Year 3, no. 36.

⁴²⁴See Employment persons with disability proclamation.

⁴²⁵Connecting Persons with Disabilities through Information and Communication Technologies (ICT) and Mobile Phones in Rural areas.

Available at: <http://usof.gov.in/usof-cms/disabled_letter/USF%20accessibility%20framework%20document-%20Concept%20paper.pdf> (last visited May 23, 2012). See also Planning and access for disabled people: a good practice guide. Available at: <Disabled Persons' Access> (last visited May 23, 2012).

⁴²⁶Ibid. See also Moving Towards Disability Inclusion. Available at: <http://www.ilo.org/wcmsp5/groups/public/--ed_emp/--ifp_skills/documents/publication/wcms_161522.pdf> (last visited June 12, 2012).

intellectual impairments. Inability to access physical or information structures will inevitably undermine the effective enjoyment of a great many rights. As a result they are left out of mainstream education and employment opportunities and are unable to lead a life of inclusion, independence and dignity.

In the information society, enjoyment of all other rights, such as education, employment, recreation, access to public information, etc are inextricably interwoven with access to electronics and information and communication technologies (ICTs). This is especially so in the context of persons with disabilities, since many of them depend solely upon the availability of assistive technology and Internet connectivity to access information.

Finally, according to article 8 of the CRPD, Ethiopia as a state party to the convention, is obliged to raise awareness to avoid stereotypes and negative attitudes towards persons with disabilities. One of the best ways of raising awareness is through mass media.

4.3 Budgeting

It takes resources to realize all rights recognized under the CRPD and a government's capacity to realize those rights is very significantly affected by how much money it has to spend and how it spends it. As it is clearly indicated above (reasonable accommodation section), contracting parties usually claim there is resource limitations for the realization of socio-economic rights. All the issues of reasonable accommodations and accessibility directly raise the matter of adequate budgeting.

Under present arrangements in Ethiopia the budget for persons with disability is not treated separately. In fact it is not advisable to entertain the matter separately. Rather it is highly recommendable to mainstream the issue of persons with disability into every Ministry along with appointing a focal person. It is, however, equally important to give due attention to budgeting in each sector. It is not appropriate to prepare the budget grossly in the sector. In each sector there should be a separate budget break down showing how it would be spent. That is to mean how much is allocated to departments and how money is allocated within program /projects. It is the

mandate of the focal person to assure its implementation. In reality, however, we do not have both the legal framework and practice precedent.⁴²⁷

It is worth to mention at this juncture the role of civil societies. They have tremendous positive contributions both in preparing and fulfilling the budget deficit. They could make policy makers sensitive and create public pressure on issues at hand as well as promote awareness of government performance. As it is discussed in detail above, the charity proclamation has a negative impact in this regard.

4.4 The Role of National Human Rights Institutions (NHRIs)

It is obvious independent monitoring bodies have a significant role in the case of persons with disability equal to, if not more, like in other scenarios. These institutions are an important mechanism to promote and ensure the implementation of the Convention.

NHRIs should be established in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (The “Paris Principles”) adopted by the General Assembly in 1993⁴²⁸ transmitted by the Commission on Human Rights in 1992.⁴²⁹

The Ethiopian Human Rights Commission⁴³⁰ and Institution of Ombudsman⁴³¹ have been established by law in 200.

These institutions should be provided with the necessary human and financial resources (which might include donor assistance) to receive, monitor and investigate complaints from or on behalf of persons with disability on violation of their rights. The mandate and powers of national

⁴²⁷CRC concluding observation on Ethiopia, CRC/C/ETH/CO/3, 1 November 2006 (it is important to note that the observation is specific to children with disability).

⁴²⁸Principles relating to the status of national institutions for the promotion and protection of human rights (The “Paris Principles”), General Assembly resolution 48/134 of 20 December 1993 (These minimum standards provide guidance for the establishment, competence, responsibilities, composition, including pluralism, independence, methods of operation, and quasi-judicial activities of such national bodies).

⁴²⁹Commission on Human Rights resolution 1992/54 of 3 March 1992

⁴³⁰Ethiopian Human Rights Commission Establishment Pro. No. 210, Neg. Gaz. Year 6, no. 40[hereafter human rights proclamation].

⁴³¹Institution of the Ombudsman Establishment proclamation No. 211, Neg. Gaz. Year 6, no. 41[hereafter Ombudsman proclamation].

institutions may be meaningless, or the existence of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers.⁴³²

Furthermore these institutions should be accessible to persons with disabilities. Despite this fact now a days these institutions are located only in Addis Ababa and in some main regional towns. As a result they are not accessible to many of persons with disability.

While persons without disability and persons with disability alike need independent NHRIs to protect their human rights, additional justifications exist for ensuring that persons with disability's human rights are given special attention. These include the facts that the situation of persons with disability makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most of them are banned to play a meaning full role in the political process; and they encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights cause of various reasons.

While the Ethiopian Human Rights Commission establishment proclamation apparently empowers the Commission to treat the issue of children and women,⁴³³ but it fails specifically mandating the Commission to entertain the matter of persons with disability. The same is true for the Institution of Ombudsman.⁴³⁴

Despite this limitation there is still a room for the Commission to address the matter of persons with disability. There is a general mandate of the Commission to ensure that human rights and freedoms are respected by all organs of the state.⁴³⁵ The most important thing is the Commission has a wide range of power to handle cases. It can receive and investigate all complaints on human rights violations made against any person, save cases brought before the House, the House of the Federation, Regional Council or before the courts of law, at any level.⁴³⁶ The great limitation of the proclamation is it does not give a quasi-judicial power. More importantly the Commission has no freedom from forms of financial control that might affect its independence.

⁴³²CRC General Comment No.2, thirty-second session, CRC/GC/2002/2 ,15 November 2002, para.11.

⁴³³See article 8(2) (c) of the human rights proclamation.

⁴³⁴See article 8(2) (c) of the ombudsman proclamation.

⁴³⁵See article 6(1) of the human rights proclamation.

⁴³⁶Id, article 7.

Similar to the Commission the Institution of Ombudsman has a general mandate to entertain cases which obviously may include the issue of persons with disability. It has a power to receive and investigate complaints in respect of maladministration; and conduct supervision, with a view to ensuring that the executive carries out its functions in accordance with the law and to preventing maladministration.⁴³⁷ Its decision, however, is not binding rather it has a recommendation status.⁴³⁸ More importantly, since it is not free from financial control there is a doubt on its independence.

The CRC, however, is very concerned of the lack of information on their work.⁴³⁹ Furthermore, these institutions are encouraged to submit additional reports directly to the Committee by themselves.⁴⁴⁰ But it is not done practically in Ethiopia.

Regarding their composition it is a necessity that they should ensure their composition includes pluralistic representation of the various elements of civil society involved in the protection and promotion of human rights.⁴⁴¹ In this regard both the Human Rights Commission and Ombudsman Institute do not address this fundamental issue.⁴⁴² Their composition is not diversified rather they are only from the judicial and legislative sectors.

4.5 Conclusion

To conclude the whole idea, the issue of reasonable accommodation is usually connected with the right to work and employment. However, close reading of various provisions of the CRPD reveals the fact that it extends to other fundamental rights (education and health) specifically the definition given by the CRPD ascertains this argument. Having this in mind, reasonable accommodation has a significant application with regard to employment matters. Accordingly it is any modification or adjustment to a job or change in the work environment that enables a qualified applicant with a disability to compete equally or a qualified employee with a disability to perform the essential functions of the position. It is important to note that it is applicable from the very moment of application of employment to its termination.

⁴³⁷See article 6(1),(2) & (3) of Ombudsman proclamation

⁴³⁸Id, art.6(4),(5)&(6) of Ombudsman proclamation

⁴³⁹See supra note 427,Para 14.

⁴⁴⁰ Ibid

⁴⁴¹See supra note 432.

⁴⁴²See article 17 of Ombudsman proclamation

Pertaining to the CRPD and the Ethiopian employment of persons with disability proclamation, denial of reasonable accommodation amounts to discrimination. As a result both the CRPD and Employment of Persons with Disability Proclamation are part and parcel of anti-discrimination laws. Hence both the CRPD's and employment law's reasonable accommodation requirements should be properly understood as a mechanism for ending discrimination against people with disabilities by requiring the removal of those workplace obstacles whose presence reflects society's disregard for and devaluation of people with disabilities. Provision of reasonable accommodation to persons with disability is not to do a special favor to them rather it is to give an equal opportunity.

There are some loopholes under the Ethiopian employment of persons with disability proclamation that might be abused by the employers. More importantly we do not have a reasonable accommodation requirement in other rights.

Even though accessibility is one of the principles of the CRDP, Ethiopian legal system, in various situations, has not addresses appropriately the matter. Because of the absence of legislations in the area of accessibility, persons with disabilities are denied their right to health, education, buildings, transport, justice and mass media and information technology in Ethiopia. As a result persons with disability could not use those services and facilities equally with other persons the country is providing for.

With regard to budgeting, Ethiopia does not have both a legal frame work and practical precedent to adequately address the matter of persons with disability.

Finally, even though, Human Rights Commission and Institution of Ombudsman are established by law, they are not mandated specifically to address the matter of persons with disability. Furthermore, they have no a quasi-judicial power and their composition is not pluralistically representative. More importantly their independence is under doubt cause of the financial issues.

Chapter Five

Conclusions and Recommendations

51 Conclusions

Various surveys on disability estimate that over one billion persons – meaning approximately 15 percent of the world's total population – suffer from some type of disability. In the years ahead, disability will be an even greater concern because its prevalence is on the rise. This is due to ageing populations and the higher risk of disability in older people as well as the global increase in chronic health conditions. Over two thirds of them live in developing countries. While their conditions vary, they are united in one common experience: being exposed to various forms of discrimination and social exclusion, which prevent them from exercising their rights and freedoms and make it difficult for them to participate fully in the activities of their societies.

Since other international human rights instruments have not protected adequately the rights of persons with disabilities there was a need to have a specific convention tailored for persons with disabilities. As a result the Convention on the Rights of Persons with Disability (CRPD) was adapted with a long process and opposition. The principal arguments for a disability-specific convention are to make it visible, specific, effective, and comprehensive and to assure equality. The counter argument against this is the CRPD does not establish new human rights for persons with disability. Rather it is a redundancy of rights recognized by other legal instruments (composed rights). To put in the other way, for instance, political and civil rights are recognized under the International Convention on Civil and Political Rights and economic, social and cultural rights under the International Convention on Economic, Social and Cultural Rights (ICESCR). The same is true for other remaining rights.

In fact there were a number of soft laws that expressly enumerate specific disability protections prior to the CRPD. But they are not adequate to protect rights of persons with disability since they are not binding. The Convention on the Rights of the Child; the African Charter on Human and Peoples' Rights; and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights are the recent hard laws which specifically addresses the issue of persons with disabilities. However, the only hard law which comprehensively and expressly addresses the interest of persons with disability is the Convention

on the Rights of Persons with Disabilities (CRPD). The simple reason for this conclusion is other soft and hard laws which indicated above only mention very limited rights. They do not incorporate all rights in a single instrument which is unexpected. Opposed to these instruments the CRPD is all inclusive and it addresses all human rights comprehensively.

Following the entry into force of the United Nations Convention on the Rights of Persons with Disability (CRPD), disability is increasingly understood as a human rights issue. Disability is also an important development issue with an increasing body of evidence showing that persons with disabilities experience worse socioeconomic outcomes and poverty than persons without disabilities.

In the past, persons with disabilities suffered from a relative “invisibility”, and tended to be viewed as “objects” of protection, treatment and assistance rather than subjects of rights. This model towards persons with disabilities, commonly referred to as “medical model” or “welfare model” of disability, focused on the persons’ medical traits (such as their specific impairments), and had the effect of locating the “problem” of disability within the person, viewed as an object for clinical or welfare interventions.

As a result of these models persons with disabilities were excluded from mainstream society, and provided with special education schools, sheltered workshops, and separate housing and transportation on the assumption that they were incapable of coping with either society at large or all or most major life activities. They were also denied equal access to those basic rights and fundamental freedoms (e.g. health care, employment, education, vote, participation in cultural activities) that those who enjoy them take for granted.

International instruments possessed vestiges of the medical model by assuming individuals are disabled due to “special” medical problems that require segregated social services and institutions as remedies.

Critics of the medical model focused on its inherent narrowness, limitations, and its concept of the individual “experience” of impairment as being too simplistic. Furthermore, medical model programs that are institutionally based are also very costly.

The social model of disability, in contrast, sees disability as a socially-created problem and not at all an attribute of an individual. Thus, the social model of disability recognizes that the disadvantages often associated with disability do not flow inevitably from mental or physical impairments per se, but instead flow from social systems and structures. Within this framework, disability demands a political and societal response, since the problem is created by an unaccommodating physical environment brought about by attitudes and other features of the social environment.

Despite its significant contribution, this model is subject to severe criticisms. Primarily it discredits medical or technological attempts to cure or ameliorate the impairment giving rise to a disability. In other words, as it is mainly puts the problem on the society, it totally neglects the positive contribution of medication. The second criticism is it has neglected economic, social and cultural rights.

The fourth model is the citizenship model. The introduction of community-based rehabilitation (CBR) into the mainstream of the health system and an extensive review of the literature shaped the construction of the framework of the citizenship model. It identified the need to bridge the dichotomy of the medical and social models by using an integrated development approach.

These represent core strategies for poverty reduction and integration. Stepping out of the poverty cycle will only be achieved when public and private sector institutions, community programs, and all sectors mainstream disability. Accordingly, the citizenship model represents an international development paradigm in which people with disabilities deserve and aspire to have the same opportunities as other citizens of their community.

Finally the bio-psychosocial model came from the publication of the International Classification of Functioning, Disability and Health (ICF) in 2001. This model integrates features of both the medical and social frameworks. Accordingly this model assumes disability is always an interaction between features of the person and features of the overall context in which the person lives, but some aspects of disability are almost entirely internal to the person, while another aspect is almost entirely external. In other words, both medical and social responses are appropriate to the problems associated with disability; we cannot wholly reject either kind of intervention.

The bio-psychosocial model posits that biological, psychological (which entails thoughts, emotions, and behaviors), and social factors, all play a significant role in human functioning in the context of disease or illness. Indeed, health is best understood in terms of a combination of biological, psychological, and social factors rather than purely in biological terms.

Since this model acknowledges that whether a person performs a socially expected activity depends not simply on the characteristics of the person but also on the larger context of social and physical environments, as a result, it offers a much broader focus of activities at both societal and individual levels to minimize disability.

This model articulates, disability, social exclusion and marginalization of persons with disabilities are the result of complex interaction of all the aforementioned factors. Hence, it suggests there is a need of integrating various models to avoid these problems.

The next issue is a state party obligation to the CRPD. Similar to other international human rights instruments, the CRPD imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfill. The obligation to respect the rights of persons with disability requires States parties to refrain from interfering directly or indirectly with the enjoyment of those rights stated under the convention.

The obligation to protect requires States parties to take measures that prevent third parties including state actors from interfering with the enjoyment of the rights of persons with disability. The obligation to fulfill includes the obligations to provide, facilitate and promote those rights. It implies that States parties should adopt appropriate legislative, administrative, budgetary, judicial and other measures to ensure its full realization. This without doubt raises the question of resources and this is the situation where developing states try to escape responsibility on the ground that their meager resources are not sufficient to live up this obligations as required. However, the CRPD has placed its own solution-international cooperation. Accordingly developed states have the obligation to provide financial and technical assistance where demanded by developing states.

Accordingly article 4 of the CRPD makes specific reference to the obligation of States parties to adopt legislative measures as a matter of general obligation. Notwithstanding the degree of autonomy that States enjoy in deciding the strategies to implement the Convention at the national

level, treaty bodies have consistently recognized that in many instances legislation is highly desirable and in some cases may even be indispensable.

Taking legislative measures is one of the most significant forward steps for the realization of rights of persons with disability. Among these adopting legislative measures abolishing any laws which are directly in conflict with the rights of persons with disabilities is the prior measure. As a result any national legislation that restricts the rights of persons with disabilities on the grounds of their disabilities is naturally in conflict with the Convention. Whenever this happens, it will require the abolition the law automatically. It is important to note that these legislative measures should be accompanied with stringent regulation and monitoring of the practice. The laws should not be paper tigers rather it is more important to put them on the ground.

In this regard this research finds that Ethiopia has various laws that need to be repealed since these laws are incompatible with the CRPD. The first is article 41(5) of the FDRE constitution which articulates both a mixing of a charity and medical model. These models reflected under the constitution clearly reflect the perspective on the rationale for the policies and programs developed for, with, and by people with disabilities in Ethiopia. However, as it is indicated without ambiguity under the CRPD persons with disabilities are not objects, but subjects of rights. Similarly it does not specifically put disability as a ground of non-discrimination.

The second is article 551(1) (d) of the criminal code which allows fetus that has a disability could be aborted which is selective abortion. This reinforces the discriminatory notion that life with a disability is somehow less valuable or not as fulfilling as a life unaffected by a disability.

In the third place there are some provisions under our civil code which do not recognize the legal capacity of persons with disabilities. As a result they are restricted from exercising their rights such as financial rights and obligations (e.g. disposing of property, entering into a contract, opening a bank account , making will), family rights and obligations (e.g. marriage and parenting, divorce and disowning), voting or expressing a political or party preference (e.g. in an election, plebiscite or referendum), and decision-making in health and medical context or in relation to housing or services (e.g. whether to undergo a particular treatment or enter a hospital, rehabilitation center or institution). The provisions stated under the civil code do not provide for supported decision making. All the decision making aspect is exclusively reserved for the

guardian and the family council. As a result they do not have an equal say in decision-making at the family and community levels.

Fourthly there are provisions in our electoral laws that restrict political participation of persons with disabilities. Art. 33(3) (a) of The Amended Electoral Law of Ethiopia prohibits a person from registration in an electoral roll who has a mental illness. Similarly according to art.14 (2) of Directive on the Registration of Candidates Number 1/2009 (as amended), to hold an office through election, candidates are illegible for registration if they have mental illness. As a result this electoral system along with other socio-economic and cultural barriers has curtailed the political participation of persons with disability in Ethiopia.

The terminology we used to refer to persons with disabilities often reflects our attitudes towards them. These attitudes are, it is said repeatedly, the most difficult barrier people with disabilities face in achieving full integration, acceptance, and participation in our society. Terminologies applied in a given legislation clearly show the stand of the state concerning them. In this regard there are various degrading terms in our civil code that need to be abolished immediately.

Even though Ethiopia is required, as a state party to the CRPD, not to take measures which have retrogressive effect on the promotion of the convention, the legislation on the charity and society is against its obligation. This measure is an action which is obviously regressive for the implementation of the CRDP.

Finally the right to employment of persons with disability proclamation, the only law of the FDRE that specifically and exclusively addresses disability rights, is one of the positive measures taken by Ethiopia. Contrary to this promising measure the labor law puts persons with disabilities in a disadvantage position where a reduction of work force takes place.

In the forth chapter this work found that even though it is the failure of providing reasonable accommodation that restricts persons with disability from exercising their rights, it is usually connected only with the right to employment/ work. This assumption is totally wrong and it should include other rights. Not to be exceptional to this wrong assumption, this issue is only incorporated under the employment proclamation in the Ethiopian legal system. As a result persons with disabilities could not claim it as of a right in other areas of services.

In our legal system educational sectors, transport service and health service providers are not required to provide reasonable accommodations. Because of the legal frame work failure to address the issue of providing reasonable accommodation, they are denied all these services.

Despite the above conclusion, reasonable accommodation has a significant application with regard to employment matters. Accordingly it is any modification or adjustment to a job or change in the work environment that enables a qualified applicant with a disability to compete equally or a qualified employee with a disability to perform the essential functions of the position. It is worth to mention that it is applicable from the very moment of application of employment to its termination.

There are some loopholes under the Ethiopian employment of persons with disability proclamation that might be abused by the employers. The criteria stated under the section of reasonable accommodation are not white and black. As a result it puts the discretion to the employers. More detail rules and regulations are crucial to make it practical on the ground. Stringent supervision and regulating mechanisms are important to avoid the skeptical of employers.

Our legal system fails to consider incentives to those employers who provide reasonable accommodations for persons with disability. The incentives may include reduction of tax or duty free importation of materials for the purpose of reasonable accommodation.

Like other antidiscrimination laws failure to provide reasonable accommodation amounts to discrimination. Provision of reasonable accommodation is not a special favor to persons with disabilities rather it is a means to give an equal opportunity so that they can exercise their rights. Both the CRPD and the Ethiopian employment of persons with disability proclamation articulate that denial of reasonable accommodation amounts to discrimination.

The other important finding is because of the absence of legislations in the area of accessibility, persons with disabilities are denied their right to health, education, buildings, transport, justice and mass media and information technology in Ethiopia.

Most buildings in the health centers are not accessible to persons with disabilities. Similarly medical equipments are hardly possible to be used by them. The health policy mainly focuses on

prevention and it ignores secondary and tertiary interventions which are appropriate to persons with disabilities.

Inclusive education is not recognized as of a right both at the legislation and policy level. As result persons with disabilities are excluded from the general education system. They are treated either by integration or especial education system which are not effective mode of education systems. The special schools, often based on the belief that persons with disabilities are uneducable and a burden on the mainstream educational system, often were - and remain - inflexible, non-individual-student specific and they fail to provide or even offer optimum results for their students. This practice of separating students with disabilities can lead to greater marginalization from society.

Ethiopian Building Proclamation has only a single provision regarding persons with disability. It lacks detail provisions which ultimately give a room for building owners and construction enterprises to abuse it. The regulating and supervising mechanism is very poor. As a result, most buildings, both in rural and urban, are not accessible to persons with disability. Very few accessible buildings, it seems, are made on the blessing of the owners not as a legal obligation. More surprisingly the Condominium Proclamation has totally ignored the issue at hand. It could be safely assumed that both the legal frame work and the practice are not promising.

Despite the fact that the ability to access transportation is a precondition to the full enjoyment of many human rights by people with disability, the real situation in Ethiopia is discouraging. Similar to other basic services, access to transportation looks a privilege to persons with disability in Ethiopia. This constitutes a significant barrier to the enjoyment of human rights by people with disabilities, and consequently their full participation and inclusion in our communities and societies. Recently there are promising practical measures underway to make city bus services accessible and giving priority to persons with disability in various ways. These buses are equipped with "lifts". However, the problem is that their numbers are very limited with the assumption of the number of persons with disabilities are few. The problem in this regard is they have to wait a long time to access these limited number of buses. The legislative measures lag behind which consequently make impossible to claim the service as of right and make the concerned organs responsible when they fail to do so.

Furthermore, in most of the occasions, the justice system is not accessible to persons with disabilities. They are denied this fundamental right because of various reasons. The main reason is the absence of legislations which requires the justice system accessible to them. They are denied the service in various ways, for instance as clients, defendants, prisoners and victims. The service provided by the justice system is not accessible. These include the equipments, buildings and personnel. Our legal system does not address the right both procedurally and substantially.

We do not have disability legislation which creates obligations for the media on accessibility and the representation of persons with disabilities. Many of persons with disabilities have no access to basic means of communication and accessing information both in rural and urban areas in Ethiopia. As a result they are left out of mainstream education and employment opportunities and are unable to lead a life of inclusion, independence and dignity. In the information society, enjoyment of all other rights, such as education, employment, recreation, access to public information, etc are inextricably interwoven with access to electronics and information and communication technologies (ICTs). This is especially so in the context of persons with disabilities, since many of them depend solely upon the availability of assistive technology and internet connectivity to access information.

With regard to budgeting, Ethiopia does not have both a legal frame work and practical precedent to adequately address the matter of persons with disability. As a result there is an apparent problem to realize their human rights. Along with allocating adequate budget, it is equally important to mainstream and assign a focal person at each Ministry/sector.

Even though, Human Rights Commission and Institution of Ombudsman are established by law, they are not mandated specifically to address the matter of persons with disability. Their mandate is very general and vague. Since they have no a quasi-judicial power their decisions are not binding. Furthermore, their composition is sector-selective and non-diversified. The members are only from the judicial and legislative organs of the government. It does not contain civil society members, professionals and trade unions. The procedure of election and its budgeting has an impact on their independence.

5.2 Recommendations

The following recommendations are put with the assumption of their priority to implement. Accordingly, the primary recommendation is abolishing laws. As we have concluded above there are various provisions in our civil code which are apparently in conflict with the very interest of persons with disabilities. These provisions should be abolished automatically. Specifically provisions which do not recognize the legal capacity of persons with disabilities and emphasizes substituted decision making should be given due consideration. They have a great impact in each and every activity of persons with disabilities. They are obviously incompatible with the CRPD. Equally important is there are few provisions in the criminal code and the labor law which are contrary to the interest of persons with disabilities. Similarly these provisions should be amended. Generally as a state party to the CRPD, Ethiopia is required to abolish existing laws which are incompatible with the convention.

Laws which have a retrogressive effect for the implementation rights of persons with disabilities should be repealed. The charity and societies proclamation is an exemplary in this case. Rather it necessary to have a comprehensive strategy to increase foreign partners to tackle resource limitations for the promotion of rights of persons with disability.

The FDRE constitution and other instruments which articulate on the charity or medical model should be amended and designed by considering the combination of other models (social, citizenship and bio-psychosocial models). The other option is providing constitutional interpretation by the House of Federation since the procedure of amending the constitutional provisions is very stringent.

Albeit, recognizing reasonable accommodation in the employment of persons with disability proclamation is a promising measure it is equally important to give it the same recognition in other scenarios. As it is mentioned repeatedly it is the social barriers that exclude persons with disabilities in the community. Hence, providing reasonable accommodation in various areas is all about avoiding the social barriers. It should be recognized failure to provide reasonable accommodation constitutes discrimination. It is to be noted that even in the employment proclamation there are some provisions that might be abused by employers. To avoid these

loopholes it is a necessity to have detailed regulations and rules. Having these detail instruments is a great tool to implement the proclamation in a significant manner.

In relation to the right to employment a provision in the labor law that put persons with disability in a disadvantage position with regard to reduction of workers should be amended.

It is very crucial to increase the political participation of persons with disability through avoiding political, socio-economic and cultural barriers. The political participation should be in all organs of the government at all levels. Both the ruling party and opposition parties should have to address the matter as a priority in their manifesto/agendas. More importantly the participants should not be elected on the basis of their political affiliation to the governing party.

The chronic problems on accessibility can be avoided only when accessibility legislations, which specify each issue as a right, are enacted. More importantly the enactments should clearly state the controlling and regulating mechanisms as well as the responsibilities in case of failures. For effective implementation, these legislations should be translated into detail regulations, rules, policies and programmes. The enactments should be developed in a way to give a common mandate to various institutions since it is not possible to implement them without coordination.

It is equally advisable to assign a focal person at every Ministry/sector along with enactments and mainstreaming. Furthermore, allocating adequate budget in each sector is indispensable for the realization of rights of persons with disability. ○

Since the charity proclamation significantly impedes the activities of civil society organizations, it is very important the government should treat exceptionally the civil society organizations those engaged specifically on persons with disability. More special attention is needed to children and women with disability.

There should be laws which oblige the collection of data and information. The existence of reliable data and information is a concrete input to develop policies and programmes tailored to persons with disability. Furthermore, the data is a basis for assessing progress achieved in the realization of rights of persons with disability.

It is highly recommended that international donors/developmental aid agencies should put the matters of persons with as a mandatory criterion before giving their financial and technical support to a given program/project along with stringent supervisions for its implementation.

It is very crucial to empower organizations of PWDs to enable them significantly participate in every scenario concerning them. They should have to demonstrate their meaningful contribution to the community in order to gain the real attention.

The Committee on Persons with Disability should urge Ethiopia to prepare its period report within a time stated in the Convention. Furthermore, the Committee should provide a concrete concluding observation that urges the government to take the necessary measures for the realization of their rights along with effective monitoring mechanisms for the implementation of the concluding observations.

The Human Rights Commission and Institution of Ombudsman should be given full independence by amending the procedure of election and budgeting as well as giving them specific mandate in relation to persons with disability. Similarly it is important to consider their composition should be pluralistic representative containing professionals, civil society and trade unions.

Though, few in number, there are persons with disabilities who are institutionalized. These persons should be deinstitutionalized. The vast majority of the needs of people with disabilities living in institutions or hospitalized could be more cost effectively provided through alternative community-based programs.

The other recommendation is recognizing sign language officially as a language and takes other measures for the promotion of it in the community at large. It has a multipurpose to realize other rights.

Finally, it is highly recommendable other researchers undertake further depth analysis on issues of health (specifically HIV/AIDS and persons with disability), transportation, education, media and justice; and disability in relation to women and children.

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