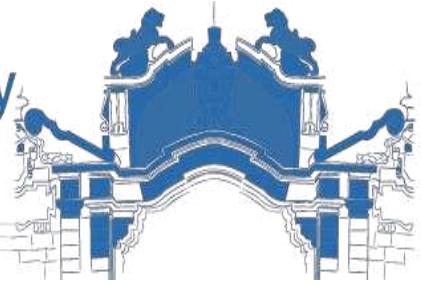




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# **ADDIS ABABA UNIVERSITY SCHOOL OF GRADUATE STUDIES LAW SCHOOL**

## **Intersectionality and the Protection of Women with Disabilities from Sexual and Gender Based Violence in the Legal Framework of Ethiopia**

A thesis submitted in partial fulfillment of the requirements for the award of Master of Laws (LL. M) in Human Rights Law at School of Law, College of Law and Governance Studies, Addis Ababa University

**By Naboni Kelbesa**

**Advisor: Sisay Alemahu (LLB, LLM, PHD)**

**May 2023  
Addis Ababa Ethiopia**

**Addis Ababa University College of Law and  
Governance Studies  
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## **DECLARATION**

I, Naboni Kelbesa hereby declare that the thesis entitled "*Intersectionality and the Protection of Women with Disabilities from Sexual and Gender Based Violence in the Legal Framework of Ethiopia*" is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that all sources used in any form are duly acknowledged to the best of my knowledge.

**Naboni Kelbesa**

**Signature** \_\_\_\_\_

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**Addis Ababa University College of Law and  
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**School of Law**

**Intersectionality and the Protection of Women with Disabilities from Sexual and  
Gender Based Violence in the Legal Framework of Ethiopia**

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## **ACRONYMS**

ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against women
CRC	Convention on the rights the child
CRPD	Committee on the Rights of Persons with Disabilities
CESCR	Committee on Economic, Social and Cultural Rights
CSO	Civil Society Organization
DEVAW	Declaration of the Elimination of Violence against Women
FDRE	Federal Democratic Republic of Ethiopia
FGM	Female Genital Mutilation
GBV	Gender Based Violence
SGBV	Sexual and Gender Based Violence
NGO	Non-governmental organization
PWDs	People with Disabilities
WWDs	Women with Disabilities
WHO	World Health Organization

## **Abstract**

Women with disability are often vulnerable to intersectional marginalization in their social, economic, and political life. By the same token, WWDs face unique vulnerability to SGBV due to their intersecting identities- Gender and Disability. However, the move from a single-axis approach towards an intersectional approach by international and regional human rights instruments has been a long route. Nevertheless, a major shift towards an intersectional approach has recently been witnessed from the work of treaty bodies and human rights compliance mechanisms, which acknowledge intersectional vulnerability in general and the double marginalization of WWDs in particular. In addition to substantive human rights guarantees, several general recommendations have put directions on how an intersectional approach can be applied in protecting WWDs from SGBV. Through an intersectional lens, the paper examines the extent of the intersectional approach taken by the Ethiopian legal framework in terms of the protection of WWDs from SGBV.

**Key Words: Women with Disabilities, Intersectionality, Sexual and Gender Based Violence, Legal Framework**

## CHAPTER ONE

### INTRODUCTION

#### 1.1.1. The Research Background and Problem

World health Organization published a global estimate that indicates about 1 in 3 (35%) of women worldwide experience SGBV in their lifetime.<sup>1</sup> On top of this, research has shown that the prevalence of violence against people with disabilities and women without disabilities is substantially different, as are women with disabilities and men with disabilities.<sup>2</sup> This shows that experience of every woman with sexual violence is not the same. As a response to this reality, the notion of "intersectionality" disparages the essentialist traditional feminism movement that universalizes every woman's experience and refers to the interaction of identity categories such as gender, disability, and race in once life experiences.<sup>3</sup>

The word 'intersectionality' describes the various ways identities such as race and gender interact to shape the multiple dimensions of individual experiences.<sup>4</sup> Though intersectionality was originally used to elucidate how black women had experienced discrimination based on gender and race, the scope of intersectionality has changed since its conception. For instance, age, disability, and ethnicity have become more significant in the discussion of intersectionality.<sup>5</sup> For Ethiopian women with disabilities, this intersection is significant precisely because of the gender roles and prejudice based on their disabilities.<sup>6</sup> A 2016 study reported that nearly a third of Ethiopian women aged 15-49 had been subjected to either sexual

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<sup>1</sup> World Health Organization, 'Violence against Women' (9 March 2021), accessed 18 May 2021.

<sup>2</sup> International Network of Women with Disabilities (INWWD), *Document on Violence against Women with Disabilities*, (2010), 7.

<sup>3</sup> Ahir Gopaldas, 'Intersectionality 101' (2013) 32 *Journal of Public Policy & Marketing* 90 <<http://journals.sagepub.com/doi/10.1509/jppm.12.044>> accessed 12 April 2023.

<sup>4</sup> Kimberle Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43 *Stanford Law Review* 1241, 1241.

<sup>5</sup> Chelsea Jones, 'Review of Hill Collins, P., & Bilge, S. (2016), "Intersectionality"' (2017) 6 *Canadian Journal of Disability Studies* 210, 212.

<sup>6</sup> Hisayo Katsui & Mina C. Mojtahedi, 'Intersection of disability and gender: multi-layered experiences of Ethiopian women with disabilities', (2015), *Development in Practice* 25:4, 563-573.

or physical violence, which is culturally and traditionally entrenched within Ethiopian society.<sup>7</sup> For instance, a study conducted by Handicap International in Ethiopia surveyed 194 WWDs and found that 46.4% were sexually abused.<sup>8</sup> In addition to this, WWDs frequently face other forms of violence that other women may not experience, such as verbal abuse or insults regarding their impairment, denial of medication and assistive devices and restricting their communication with friends and family.<sup>9</sup> Some groups of women with disabilities who belong to another disadvantaged or marginalized group also have a higher risk of violence because of the additional factors.<sup>10</sup> In the case of developing countries like Ethiopia, this situation can be attributed to economic status, as women with disability have relatively lower economic status even in the developed world.<sup>11</sup>

A number of international and national legal instruments sought to address the problem of inequality and marginalization. For instance, article 25 of the Ethiopian constitution provides for a right to equality before the law<sup>12</sup>, and although disability is not listed explicitly as sex among the prohibited ground of discrimination, it can fall within the phrase 'other statuses'. Article 35 of the constitution further grants equal rights to women in every aspect.<sup>13</sup> Ethiopia is also a party to a number of international human rights treaties, which according to the constitution, become an integral part of its laws.<sup>14</sup> The UN Convention on the Rights of Persons with Disabilities (CRPD)<sup>15</sup> is one of the gender-sensitive conventions whose preamble and

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<sup>7</sup>UNODC, 'Addressing Violence against Women and Girls in Ethiopia' (12 January 2020) <<https://www.unodc.org/easternafrika/en/addressing-violence-against-women-and-girls-in-ethiopia.html>> accessed 21 November 2020.

<sup>8</sup> *Handicap International and Bureau of Labour and Social Affairs, 'Sexual Violence and Abuse Faced by Persons with Disabilities', Formative Research in Dire Dawa and Addis Ababa, Ethiopia, (2011), 20.*

<sup>9</sup> *United Nations High Commissioner for Human Rights, 'Thematic study on the issue of violence against women and girls and disability', Report of the Office of the United Nations High Commissioner for Human Rights, (2012), Para 22.*

<sup>10</sup> *Stephanie Ortoleva, "Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System," (2011), 17, ILSA Journal of International & Comparative Law, 28.*

<sup>11</sup> *UNODC (n 7), Para17.*

<sup>12</sup> *Proclamation No. 1/1995 Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, 1st Year, No1 Addis Ababa (21st August 1995) Art.25.*

<sup>13</sup> *Ibid, Art. 35.*

<sup>14</sup> *Ibid, Art (13(2.))*

<sup>15</sup> *Convention on the Rights of Persons with Disabilities, (adopted 24, January 20027, entered into force on 3 May 2008) UNGA Res 61/106 2-29 (CRPD).*

Article 6 clearly describe WWDs as susceptible to multiple forms of discrimination and calls on states to ensure necessary measures to ensure the protection of women with disabilities.<sup>16</sup> The country has also ratified the convention on the Elimination of All Forms of Discrimination against Women, which obliges states to accord equal protection to PWDs.<sup>17</sup> There are also several national legislation and policies adopted for the protection of women against discrimination and for the protection of individuals with disabilities in Ethiopia, including providing equal opportunities in employment<sup>18</sup>. However, despite the separate protection of the rights against discrimination of women and the rights of PWDs, the legal framework appears inadequate for protecting WWDs against intersectional discrimination.<sup>19</sup>

The gaps in protection against intersectional discrimination are due to the fact that "violence against women and girls with disabilities is not just a subset of gender-based violence; it is rather an intersectional category dealing with gender-based and disability-based violence".<sup>20</sup> Although there is a slow increase in understanding of the need to address the "single-axis thinking" and essentialism that characterizes the formulation of the supervision on non-discrimination within most of the international human rights instruments,<sup>21</sup> national courts stay indifferent on how to appropriately assess and take account of the qualitatively different intersectional discrimination.<sup>22</sup> The research thus seeks to point out the legal lacuna in this regard and explore how an intersectional legal approach can provide further protection for women with multiple marginalization's in Ethiopia. It seeks to focus on sexual violence against WWDs and the capacity of current legal approaches to fully address the vulnerability of WWDs in all areas of social, cultural, and economic life.

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<sup>16</sup> *Ibid*, preamble and Art 6(1)

<sup>17</sup> 'Convention on the Elimination of All Forms of Discrimination against Women. Adopted by the General Assembly of the United Nations on 18 December 1979', in United Nations, Treaty Series 1979 (UN 2000) <<https://www.un-ilibrary.org/content/books/9789210455091s003-c032>> accessed 31 May 2022.

<sup>18</sup> Right to Employment of Persons with Disability Proclamation No. 568/2008, Federal Negarit Gazeta 14<sup>th</sup> Year No. 20, Addis Ababa (March 2008).

<sup>19</sup> Belayneh Admasu, 'Legal Protections Accorded to Persons with Disabilities under Ethiopian Law' (2012) 3 Bahir Dar University Journal of Law 297, 298.

<sup>20</sup> Chelsea Jones (n 5)

<sup>21</sup> Ivona Truscan and Joanna Bourke-Martignoni, 'International Human Rights Law and Intersectional Discrimination', (2016) 16 *The Equal Rights Review*, 201,1.

<sup>22</sup> Aarti Iyer, Toni Schmader and Brian Lickel, 'Why Individuals Protest the Perceived Transgressions of their Country' (2007) 33 *Personality and Social Psychology Bulletin*.

### **1.1.2. The Objective of the Study**

### **1.1.3. General Objective**

The general objective of the research is to explore the extent to which intersectional discrimination is addressed within the Ethiopian legal framework.

### **1.1.4. Specific Objectives**

- Examine the intersecting marginalization women with disabilities face in Ethiopia by employing the intersectional lens.
- Explore international and national legal frameworks in the protection of WWDs from intersectional vulnerability with a specific focus on sexual and gender-based violence.
- Identify legal gaps (if any) through an intersectional lens and propose remedies towards the betterment of the legal framework towards SGBV on WWDs in Ethiopia.

### **1.1.5. Research Question**

The central research question queries how the Ethiopian legal framework renders protection of WWDs from sexual and gender-based violence. Sub-questions include:

- To what extent does the international human rights framework apply an intersectional approach in the legal protection of women with disabilities?
- To what extent does Ethiopia's current legal framework protect women with disabilities from sexual and gender-based violence?
- How can an intersectional approach better assist the Ethiopian legal framework in providing full-fledged legal protection for WWDs?

### **1.1.6. The Literature Review**

Pederson, Greaves, and Poole suggested an intersectional approach that questions current gender norms and power structures to eliminate gender inequality while also accounting for how other embodied and ascribed roles impact these norms.<sup>23</sup> Similarly, Freedman stated that intersectional methods acknowledge that new empirical techniques can be used to observe the unique types of discrimination that exist at the intersection between multiple structures of operation by concrete interventions that may go beyond those usually provided for in cases of discrimination on a single basis.<sup>24</sup> Crenshaw has, on the other hand, explained how sexual violence against women is now recognized mainly as a part of a broad-scale system of

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<sup>23</sup> Ann Pederson, Lorraine Greaves and Nancy Poole, 'Gender-Transformative Health Promotion for Women: A Framework for Action' (2014), 30.

<sup>24</sup> Sandra Freedman, 'Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights' (2003), 15.

domination that affects women as a class<sup>25</sup> but that identity politics has failed to recognize intergroup differences.<sup>26</sup> Therefore, there has been a failure to recognize that violence against women is often shaped by other dimensions of their identities, such as race and class.<sup>27</sup> Thus, Crenshaw advocates the expansion of feminist theory and anti-racist politics to recognize the intersection between the two forms of discrimination in which black women are subjected to disadvantages not experienced by those who are singularly disadvantaged.<sup>28</sup> Truscan and Bourke-Martignono highlighted the fact that the remedies provided by international human rights mechanisms in individual cases, as well as their policy recommendations, have tended to reinforce the singular conception of discrimination.<sup>29</sup>

Coming to Ethiopia, recently Katsui and Mojtabehi discussed the intersection of disability with gender and the multi-layered experiences of Ethiopian women with disabilities.<sup>30</sup> The authors highlighted how poverty deeply affects the realities of persons with disabilities in Ethiopia and the fact that there are significant gender disparities in access of individuals with disabilities to both education and employment.<sup>31</sup> In relation to this, Dessie, Bekele, and Bigeri have researched the experiences of women with disabilities who experienced sexual violence in Ethiopia, finding that such women became exposed to such violence due to their perceived defencelessness and lack of protection.<sup>32</sup> Disability and poverty were found to be additional risk factors in relation to gender-based violence. The taboo nature of sexual violence in Ethiopian society made it difficult for disabled women to speak about their experiences and get help.<sup>33</sup> Hana Mulgeta, on the other hand, viewed intersectionality and the right of women with disabilities and their reproductive entitlement, where she suggests assurance of reproductive health circumvents barriers that transcend within the rights secured for women with

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<sup>25</sup> Crenshaw (n 4)

<sup>26</sup> *Ibid*, 1241.

<sup>27</sup> *Ibid* 1242.

<sup>28</sup> Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) *University of Chicago Legal Forum* 139, 167.

<sup>29</sup> *World Health Organization* (n 1)

<sup>30</sup> Gopaldas (n 3) 563, 563.

<sup>31</sup> *ibid* 567.

<sup>32</sup> Samrawit Dessie, Yirgashewa Bekele and Margarita Bilgeri, 'Sexual Violence against Girls and Young Women with Disabilities in Ethiopia. Including a Capability Perspective' (2019) *15 Journal of Global Ethics* 325, 326.

<sup>33</sup> *ibid*.

disabilities.<sup>34</sup> Mahider Habtemariam also explored the rights of WWDs in terms of access to justice to justice in Ethiopia and identified the various practical challenges WWDs face in Ethiopia.<sup>35</sup>The review of relevant literature shows that the issue of SGBV and intersectional vulnerability of WWDs and available protections have not been explored within an intersectional lens of gender and disability in the Ethiopian legal framework. Consequently, the current research aims to explore the extent of international and national protection for WWDs who are intersectionally vulnerable to SGBV. And establish how this theoretical position can establish greater real-world legal protection for Ethiopian WWDs.

#### **1.1.7. The Research Method**

The study mainly employs the doctrinal research approach and uses qualitative data to identify the law's position on the framed legal query. It begins with a theoretical analysis exploring the theory of intersectionality and then explores the specific legal protections accorded to WWDs against SGBV through the same lens. Hence the paper examines international and national laws and regulations as a primary source. Particularly DEVAW, CEDAW, CRPD, CRC, AHPRC and the additional protocols will be discussed among international and regional legal frameworks. From domestic laws, the Ethiopian Constitution, the Ethiopian Criminal Code, the Ethiopian Family law, Labour and Employment Proclamations and the Proclamation on the definition of powers and duties of executive organs will be given due emphasis. In addition to exploring theoretical frameworks and literature reviews as secondary sources, the paper also utilizes a limited number of interviews and documentaries to support the findings from the doctrinal examination.

#### **1.1.8. Thesis Organization and Size**

The thesis is composed of five chapters. The first chapter introduces the subject, frames the research problem, lays out the research questions and defines its methodology. The second chapter investigates the theoretical framework of intersectionality, specifically focusing on the intersecting factors of gender and disability. The third chapter reviews the international human rights framework in light of intersectionality. The fourth chapter analyses the selected legal frameworks vis-a-vis intersectionality theory and international human rights framework. The

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<sup>34</sup> Hana Mulgeta, 'Sexual and Reproductive Health Rights of Women with Disabilities; The case of Women with sensory and physical impairment in Addis Ababa', (June 2019).

<sup>35</sup> Mahider Mulugeta Habtemariam, 'gender-based violence, women with disabilities and access to justice: Ethiopia and Kenya.(2015).

last and fifth chapters will then end the paper by presenting concluding remarks and recommendations.

## **CHAPTER TWO**

### **THEORETICAL FRAMEWORK**

#### **Introduction**

This chapter lays out the major theoretical aspects that the paper is based on. It defines the intersectional lens and unpacks its application in international human rights law; the chapter also defines and limits the major aspects to be discussed in the next chapters. Accordingly, the chapter guides the specific lens to be applied and frames the paper's theoretical understanding.

#### **2.1.1. Intersectionality: Unpacking the Theory**

Since the formulation of the term intersectionality by the critical race theorist Kimberly Crenshaw in 1989<sup>36</sup>, feminist scholars, writers and critiques have forwarded various identifications and interpretations as to the concept's meaning, coverage and extent. Crenshaw's original stipulation of the term focused on the intersection of race and gender, which placed women of colour in a position of multiple discrimination. Yet, her conclusion in no way precluded the intersection of other identities. In fact, Crenshaw stated the need to consider the multiple grounds of identity in analyzing the construction of the social world<sup>37</sup>.

In fact, nothing in her writing precludes the expansion of intersectionality. Similarly, while Patricia Hill Collins focuses on black women and the matrix of domination they face, she also recognizes the different dimensions of the matrix based on religion, sexual orientation, and age.<sup>38</sup> Moreover, other scholars who instituted expanding the concept argued that the intersection of other social, structural, economic and identity factors can also intersect and create a varied experience. For instance, Naomi Zack argues that differences in sexual orientation, age, and physical ableness also create a different experience for all women, as the interaction of those identities creates a unique level of marginalization.<sup>39</sup> Despite the various stipulations, the underlying idea of the term explores multiple structural and identity forces that

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<sup>36</sup> Crenshaw (n 28), 139

<sup>37</sup> Crenshaw (n,4), 1245

<sup>38</sup> *ibid*

<sup>39</sup> Naomi Zack, 'Inclusive Feminism: A Third Wave Theory of Women's Commonality'(2005), Rowman & Littlefield Publishers Ltd, 7.

create a distinct kind of experience for groups and individuals of varied backgrounds.<sup>40</sup> Most scholars focused on vulnerabilities that a person experiences when multiple identities intersect, while others indicated the fact that the intersection of such identities could also garner an experience of a privilege. This comes to the discussion of whether intersectionality is a general theory of identity or just a way of elucidating various experiences of multiple discrimination<sup>41</sup>. For instance, structural intersectionality indicates inequality as a result of unequal positions in society, while political intersectionality indicates inequality as a result of political strategies that marginalize a certain group of people<sup>42</sup>. As noted by Virginia May, intersectionality in dynamic and shifting ways deals with lived identities, structural systems, sites of marginalization, forms of power and modes of resistance<sup>43</sup> Similar perspective is reflected by Hill-Collins, who explains that social institutions, organized structures, and social organizations can be assessed using the intersectionality framework.<sup>44</sup>

Another major discussion regarding the state of intersectionality is the difference between the term with other similar vocabularies used to explain the same. For instance, scholars emphasize that intersectional discrimination varies from multiple discrimination and compounded discrimination in that both terms come under the predominant concept of discrimination.<sup>45</sup> But intersectional discrimination creates a unique form of discrimination unlike additive effects or impacts of existing social categories<sup>46</sup> However; the challenge unfolds when trying to differentiate between intersectional discrimination and discrimination that results from additive

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<sup>40</sup> Wendy Smooth, 'Intersectionality from theoretical Framework to Policy Intervention' in Wilson (ed.), *Situating Intersectionality: Politics, Policy and Power* (2013) 11, 20

<sup>41</sup> Peter Kwan, 'Jeffrey Dahmer and the cosynthesis of categories' (1996), 48 *Hastings Law Journal*, 1257-1292.

<sup>42</sup> Mieke Verloo, 'Intersectional and Cross-Movement Politics and Policies: Reflections on Current Practices and Debates' (2013) 38 *Signs: Journal of Women in Culture and Society* 893 <<https://www.journals.uchicago.edu/doi/10.1086/669572>> accessed 1 January 2023.

<sup>43</sup> Vivian May, 'Pursuing Intersectionality, Unsettling Dominant Imaginaries', (2015), Routledge, Taylor & Francis Group.

<sup>44</sup> Eilish Rooney, 'Women's Equality in Northern Ireland's Transition: Intersectionality in Theory and Place' (2006) 14 *Feminist Legal Studies* 353 <<https://doi.org/10.1007/s10691-006-9032-z>>.

<sup>45</sup> Dagmar Schiek, Mark Bell and Lisa Waddington, 'Cases, Materials and Text on National, Supranational and International Non-Discrimination Law' (2007) Hart Publishing 170,3

<sup>46</sup> Rachel Kahn Best and others, 'Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation: Multiple Disadvantages' (2011) 45 *Law & Society Review* 991 <<https://onlinelibrary.wiley.com/doi/10.1111/j.1540-5893.2011.00463.x>> accessed 25 March 2023.

or cumulative grounds.<sup>47</sup> Hence, intersectional theories depend on a matrix framework that distinguishes the intricately tangled functions of both identities and power.<sup>48</sup> What is more, intersectional approaches acknowledge the need for new analytical tools that can provide specific measures beyond the available mechanisms to handle the case of discrimination based on single grounds or compounded grounds.<sup>49</sup>

Nevertheless, despite being recognized as the most significant theoretical contribution in the history of women's studies,<sup>50</sup> the practical effectiveness of the concept remains contested. Some scholars question the concept by indicating that the concept of intersectionality leads to dissecting group identities until the individual becomes the standing point and the group vanishes.<sup>51</sup> Besides, the "relativism problem" denotes that every individual is a potential oppressor and renders the concept of antidiscrimination and equality meaningless.<sup>52</sup> Furthermore, Cogens argues that intersectionality cannot address inequality, which is a complicated phenomenon.<sup>53</sup> It remained debatable whether the juridical understanding of 'intersectionality' could address the complex analysis demanded by intersectionality.<sup>54</sup>

This assessment implies that intersectional approaches are more of an observational aid for anti-discrimination law rather than a practical gear that affects the formulation and implementation of policies, programmes and laws to address intersectional forms of oppression.<sup>55</sup> However, the critiques are fundamentally challenged by feminist scholars and

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<sup>47</sup> Gauthier De Beco, 'Protecting the Invisible: An Intersectional Approach to International Human Rights Law' (2017) 17 *Human Rights Law Review* 633 <<http://academic.oup.com/hrlr/article/17/4/633/4565575>> accessed 1 June 2023.

<sup>48</sup> May (n 43).

<sup>49</sup> Fredman, (n 24).

<sup>50</sup> Leslie McCall, 'The Complexity of Intersectionality' (2005) 30 *Signs: Journal of Women in Culture and Society* 1771 <<https://www.journals.uchicago.edu/doi/10.1086/426800>> accessed 1 February 2022.

<sup>51</sup> Michelle Madden Dempsey (ed), '223Bibliography', *Prosecuting Domestic Violence: A Philosophical Analysis* (Oxford University Press 2009).

<sup>52</sup> Truscan and Bourke-Martignoni, (n 21) 201. 4.

<sup>53</sup> Joanne Conaghan, 'Intersectionality and the Feminist Project in Law' in Grabham et al. (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (2009) 21, 21.

<sup>54</sup> Timo Makkonen, 'Multiple, Compound and Intersectional Discrimination; Bringing the Experiences of the Most Marginalized to the Fore' (LLM Thesis, Abo Akademi University, 2000) 36.

<sup>55</sup> Barbara Tomlinson, 'Colonizing Intersectionality: Replicating racial hierarchy in feminist academic arguments', (2013), 19 *Journal for the Study of Race, Nation and Culture*, 254, 272..

writers who argue that the critiques raised against intersectionality are decipherable and that international human rights institutions should explore intersectionality to guarantee substantive equality.<sup>56</sup>

### **2.1.2. Intersectionality and Human Rights: Intersectionality a tool to reform antidiscrimination law?**

The concept of intersectionality has become a point of discussion in the international human rights law discourse.<sup>57</sup> As a theory that questions the hidden privileges and vulnerabilities in a single-axis view of discrimination, intersectionality challenges the approach taken by the international human rights monitoring mechanisms.<sup>58</sup> Indeed, as a general theory of identity, the concept of intersectionality is multifunctional to indicate oppression and discuss its remedy concurrently.<sup>59</sup> While international law has been critiqued for mainly being expository and falling short of solutions to deal with instances of intersectionality, some of the evolving efforts by the treaty bodies to guide policy and legislative change have also been recognized, and the potential of international human rights law acknowledged.<sup>60</sup>

### **2.1.3. Single Axis Approach in International Human Rights Law**

It is argued by scholars that the law, in most cases, utilizes the single-axis approach failing to address the varied experience of those with intersecting marginalization<sup>61</sup> Historically, political liberation struggles focused on single identities, and the development of discrimination law has mostly depended on the products of those struggles.<sup>62</sup> The single-axis model is also critiqued for essentializing identity groups as it mostly characterizes individuals by a specific dominant aspect leaving out other complex interactions of multiple identities and statuses.<sup>63</sup> Even when the law recognizes discrimination on multiple grounds, it separately evaluates the specific impact of distinct discriminations instead of acknowledging the unique impact of the

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<sup>56</sup> *Truscan and Bourke-Martignoni*, (n 21) 29.

<sup>57</sup> *Yuval-Davis*, 'Intersectionality and Feminist Politics' (2006) 13 *European Journal of Women's Studies* 194

<sup>58</sup> *May* (n 43).

<sup>59</sup> *Ben Smith*, 'Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective' (2016), 16, *The Equal Rights Review*.

<sup>60</sup> *De Beco* (n 47).

<sup>61</sup> *Iyiola Solanke*, 'Infusing the Silos in the Equality Act 2010 with Synergy' (2011) 40, *Industrial Law Journal*, 330.

<sup>62</sup> *Ibid*

<sup>63</sup> *Smith* (n 59),

intersection of the two.<sup>64</sup> Truscan and Bourke-Martignono highlighted the remedies provided by international human rights mechanisms in intersectional cases and found that they have tended to reinforce the singular conception of discrimination.<sup>65</sup> Particularly antidiscrimination law is critiqued for lacking the framework to resolve cases of intersectional discrimination law as it is designed based on single grounds of discrimination, and the breakdown of intersectionality will depend on the consent of courts to scrutinize its complex intersection.<sup>66</sup> Additive discrimination only requires prove of each element independently and maintains mutually exclusive grounds of discrimination.<sup>67</sup> Most of the national constitutional orders and international and regional human rights instruments have depended on the recognition of multiple discrimination autonomously. Though there is a working progress international human rights monitoring mechanisms have largely relied on the single-axis approach when interpreting and enforcing legal protections against discrimination.<sup>68</sup> Various remedies forwarded by treaty bodies and their following policy recommendations are evident of the fact that the singular axis has been a major conception in their operation.<sup>69</sup> Hence, antidiscrimination law that utilizes the single-axis model has failed those with intersectional vulnerability rendering them invisible.<sup>70</sup>

#### **2.1.4. Intersectional Approach: Intersectionality in Law and Policy Frameworks**

The fight against marginalization and power imbalance requires recognizing intersectional discrimination and reinforcing national, regional, and international human rights guarantees accordingly.<sup>71</sup> First, intersectional scrutiny can have a groundbreaking outcome on understanding discrimination by revealing hidden biases and exposing the different aspects of

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<sup>64</sup> *Bahl v Law Society*, [2004] EWCA Civ 1070.

<sup>65</sup> *Truscan and Bourke-Martignoni* (n 52).

<sup>66</sup> *De Beco* (n 47).

<sup>67</sup> *Karon Monaghan, 'Monaghan on Equality Law' (Oxford University Press 2013)* <<https://books.google.com.et/books?id=LUNLtwAACAAJ>>.

<sup>68</sup> *May* (n 43).

<sup>69</sup> *ibid.*

<sup>70</sup> *Smith* (n, 59)

<sup>71</sup> *Pok yin Chow, 'Has Intersectionality Reached its Limits? Intersectionality in the UN Human Rights Treaty Body Practice and the Issue of Ambivalence' (2016) 19 Human Rights Law Review 453.*

discrimination<sup>72</sup>. Besides, this improved perception of discrimination can lead to better and more efficient policies to combat intersectional marginalization.<sup>73</sup>

While some scholars argue that it is incumbent upon legal instruments to specifically mention the intersectionality perspective of discrimination and vulnerability to make implementation achievable,<sup>74</sup> some have challenged the relevance of the reference to intersectionality in legislation.<sup>75</sup> With this in mind, further research on the application of intersectionality in international human rights law and the drawing of interpretative protocols has proved pertinent.<sup>76</sup> According to Crenshaw, the just implementation of intersectionality cannot be measured with the same parameter, and hence the lack of common methodological tools to assess policies is a challenge for the implementation of intersectionality in legislation.<sup>77</sup> Hence, by pushing for an integrated intersectionality approach, the law's response can be tailored to the historical and social facts of oppression and domination.

#### **2.1.5. Intersectionality of Gender and Disability: How does the Intersection of the two Identities Affect the Rights of WWDs to be free from violence?**

#### **2.1.6. Defining Disability**

Article 1 of the CRPD states, "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".<sup>78</sup>

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<sup>72</sup>Makkonen (n 54)

<sup>73</sup> *ibid*

<sup>74</sup> Paper presented at the ECPR First European Conference on Politics and Gender, ( 21 -23 January 2009), Queen's University Belfast, Belfast.

<sup>75</sup> Mieke Verloo and others, 'Putting Intersectionality into Practice in Different Configurations of Equality Architecture: Belgium and the Netherlands' (2012) 19 *Social Politics: International Studies in Gender, State & Society* 513 <<https://academic.oup.com/sp/article-lookup/doi/10.1093/sp/jxs021>> accessed 1 June 2022.

<sup>76</sup> De Beco (n 47)

<sup>77</sup> Olena Hankivsky and others, 'An Intersectionality-Based Policy Analysis Framework: Critical Reflections on a Methodology for Advancing Equity' (2014) 13 *International Journal for Equity in Health* 119 <<http://equityhealthj.biomedcentral.com/articles/10.1186/s12939-014-0119-x>> accessed 1 January 2023.

<sup>78</sup> CRPD (n 15) Art 1

### 2.1.7. Models of Disability

As defined by Amponsah-Bediako, models of disabilities are strategies that serve as a tool to define impairment and acknowledge how attitudes and prejudices impact on PWDs.<sup>79</sup>

#### ➤ The Charity Model

As the name indicates, the *Charity Model* implicates charitable support for PWDs and considers them to be "victims to be pitied".<sup>80</sup> This model depends on the goodwill of service providers rather than human rights.<sup>81</sup> The model is largely based on the idea that disability impedes one from accessing basic social resources, when in fact, it is social situations and available services that impedes one from the same.<sup>82</sup> Hence, the model is criticized for standing opposite to basic human rights principles; equality and justice.<sup>83</sup>

#### ➤ The Moral Model

The *moral model* perceives disability as a punishment or a curse that happens as a result of wrong doings by the disabled person or related individuals.<sup>84</sup> The model further attributes birth defects to past wrongdoings.<sup>85</sup> Since the model connects disability with sin and shame, it tends to put a burden on the person with disability and forces families to hide a disabled family member from social activities.<sup>86</sup> Thus, this model has been irrelevant in recent developments since it appears to be contrary to human rights principles<sup>87</sup>.

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<sup>79</sup> Kofi Amponsah-Bediako, 'Relevance of Disability Models from the Perspective of a Developing Country: An analysis,' (2013) 3 *Developing Country Studies*, 122.

<sup>80</sup> Shanimon Saleem and Rateesh K Nair, 'Theoretizing the Models Of Disability Philosophical Social And Medical Concepts- An Empirical Research Based On Existing Literature' [2014] *SSRN Electronic Journal* <<https://www.ssrn.com/abstract=4273899>> accessed 6 March 2022.

<sup>81</sup> *Disability – Human Rights based model versus the Social, Medical and Charity models*, Disability Junction, CUTS Centre for Consumer Action, Research & Training (CART), 2011, available at [http://www.cuts-international.org/cart/pdf/dis-ability\\_junction\\_03-2011.pdf](http://www.cuts-international.org/cart/pdf/dis-ability_junction_03-2011.pdf), p.1.

<sup>82</sup> Amponsah-Bediako (n 79) 124.

<sup>83</sup> Ibid

<sup>84</sup> Ibid

<sup>85</sup> Ibid

<sup>86</sup> Deborah Kaplan, 'The Definition of Disability: Perspective of the Disability Community', (2000) 3 *Journal of Health Care, Law and Policy*, 351

<sup>87</sup> Amponsah-Bediako (n 79), 124.

### ➤ **The Medical Model**

Among the various models on disability, the medical model became influential in the early 20th century, assuming that disability is exclusively related to the individual's medical condition that needs to be fixed or cured.<sup>88</sup> Since this model views PWDs as faulty and weak, the assumption is that PWDs should adapt to their environment with treatment and rehabilitation assistance provided by medical professionals.<sup>89</sup>

### ➤ **The Social Model**

The *social model* dominantly attributes disability to the social environment and indicates the impact of accommodations provided for PWDs on their role in society.<sup>90</sup> Therefore, according to the model, the solution lies in repairing social constructs and availing proper accommodations.<sup>91</sup>

### ➤ **The Human Rights Model**

Adhering to the social model of disability, the *human rights model* emphasizes the dignity of PWDs and trails a rights-based discourse.<sup>92</sup> Similar to the social model, the human rights model does not associate the problem of disability with the PWD and hence, puts expectations on the state to remove any social and economic barriers.<sup>93</sup> Hence, in order to ensure equality and inclusion, the interest of PWDs should be accommodated in the policies and laws of the country.<sup>94</sup>

## **2.1.8. Defining Sexual and Gender-Based Violence**

The term violence against women comprises various abuse and harassment that occur to women and girls over their lifetime. Article 1 of DEVAW defines the term as follows.

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<sup>88</sup> Kathryn Sullivan, 'The Prevalence of the Medical Model of Disability in Society', (2011) 13 AHS Capstone Projects [http://digitalcommons.olin.edu/ahs\\_capstone\\_2011/13](http://digitalcommons.olin.edu/ahs_capstone_2011/13), accessed on September 25, 2022.

<sup>89</sup> Gary Norman, 'Re-examining Models of Disability and Applying Rationality, Morality and Ethics to Support Disability Rights in Context of Genetics.' (2010) *American University Health Law and Policy*, 21.

<sup>90</sup> Sopia Mitra, 'The Capability Approach and Disability,' (2006), 16, *Journal of Disability Policy Studies*, 237.

<sup>91</sup> *Ibid*

<sup>92</sup> Amponsah-Bediako (n 59)

<sup>93</sup> Ilze Grobbelaar-du Plessis and Tobias van Reenen (eds.) (2011), *Aspects of Disability Law in Africa, the World Bank, Washington D.C*, xxvi.

<sup>94</sup> *Ibid*

"Violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

This statement emphasizes the term 'gender based' to indicate the connection of violence to inequality between men and women and defines violence as acts that cause harm<sup>95</sup>. Gender-based violence' is an umbrella term that has not been universally defined. A narrow interpretation confines the term to meaning rape and related sexual assault.<sup>96</sup>The term gender-based violence has been defined as "acts or threats of acts intended to hurt or make women suffer physically, sexually or psychologically, and which affect women because they are women or affect women disproportionately".<sup>97</sup> Similar to the definition accorded by DEVAW, this definition also designates gender inequality as a root cause of the same. Hence, GBV/SGBV as 'acts or threats of acts intended to hurt', can include **sexual, physical, mental and economic harm** inflicted in public or in private. As an umbrella word, GBV/SGBV can take many forms, such as intimate partner violence, sexual violence and traditional harmful practices, domestic violence, human trafficking and other forms of physical and emotional abuse.<sup>98</sup> However, various factors have been identified as driving causes of GBV/SGBV. However, as indicated in the DEVAW provision, the major cause remains to be gender inequality and discrimination that create male-dominated structures and social and cultural attitudes about women and men.<sup>99</sup>

### 2.1.9. The Intersection of Disability and Violence Against Women

As precisely expressed by Theresia Degener, who was a member of the Committee on the Rights of Persons with Disabilities in 2016, "*The impact of this systemic discrimination is*

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<sup>95</sup> Gunilla Krantz, 'Violence against Women' (2005) 59 *Journal of Epidemiology & Community Health* 818 <<https://jech.bmj.com/lookup/doi/10.1136/jech.2004.022756>> accessed 25 March 2023.

<sup>96</sup> Michelle Hynes and Barbara Lopes Cardozo, 'Observations From the CDC – Sexual Violence Against Refugee Women' (2000) 9(8) *Journal of Women's Health & Gender-Based Medicine* 819- 823, 819

<sup>97</sup> Annemiek Richters, *Women, Culture and Violence: A Development, Health and Human Rights Issue* (Women and Autonomy Centre (VENA), Leiden University 1994).

<sup>98</sup> Andrew Simon-Butler and Bernadette McSherry, 'Defining Sexual and Gender-Based Violence in the Refugee Context,' (2018), 2 *Birmingham: Institute for Research into Super diversity*.

<sup>99</sup> M Marsh, S Purdin and S Navani, 'Addressing Sexual Violence in Humanitarian Emergencies' (2006) 1 *Global Public Health* 133 <<http://www.tandfonline.com/doi/abs/10.1080/17441690600652787>>accessed 9 February 2023.

*heightened at key intersections involving sexual orientation and gender identity, race, ethnicity, religion, economic status, and disability".<sup>100</sup>*

Women comprise a significant number of PWDs in low- and middle-income countries, as 1 in 5 women live with a disability in such locations.<sup>101</sup> Due to their marginalized position within society, WWDs face discrimination and violence by family members, strangers, caregivers, institutions, and homes.<sup>102</sup> Hence, WWDs are at a greater risk of abuse, such as domestic violence, since perpetrators can be partners, family members or care agencies. WWDs also face various barriers to seeking help and reporting incidents due to increased financial, physical, and emotional dependence on the perpetrator.<sup>103</sup> In addition, lack of information and difficulties in accessing services, conception and reactions by police or other institutions highly limit their access to justice.<sup>104</sup> Research also indicates that the lack of services and obstacles WWDs face results in poorer health, lower education achievements, fewer economic opportunities, and higher poverty rates than people without disabilities.<sup>105</sup> Women with disabilities often experience multiple forms of discrimination based on other factors in addition to gender and disability. Yet, all these harmful attitudes and intersectional vulnerabilities limit the ability of women and girls with disabilities to exercise their legal capacity and place them at greater risk of experiencing SGBV.<sup>106</sup>

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<sup>100</sup> *Simon-Butler (n 98).*

<sup>101</sup> *Fact Sheet: Violence against Women and Girls with Disabilities (Plan International, 2013). Available at: [http://www.un.org/womenwatch/daw/csw/csw57/side\\_events/Fact%20sheet%20%20VAWG%20with%20disabilities%20FINAL%20.pdf](http://www.un.org/womenwatch/daw/csw/csw57/side_events/Fact%20sheet%20%20VAWG%20with%20disabilities%20FINAL%20.pdf)*

<sup>102</sup> *Sarah Charman and Emma Williams, 'Accessing Justice: The Impact of Discretion, "Deservedness" and Distributive Justice on the Equitable Allocation of Policing Resources' (2022) 22 Criminology & Criminal Justice 404 <<http://journals.sagepub.com/doi/10.1177/17488958211013075>> accessed 1 June 2023.*

<sup>103</sup> *ibid.*

<sup>104</sup> *Ibid*

<sup>105</sup> *Dessie, Bekele and Bilgeri (n 32).*

<sup>106</sup> *Humanity & Inclusion. Gender and disability intersectionality in practice: Women and girls with disabilities addressing discrimination and violence in Africa. Lyon: Humanity & Inclusion, 2018.*

## CHAPTER THREE

### INTERSECTIONALITY IN INTERNATIONAL AND REGIONAL HUMAN RIGHTS FRAMEWORKS

#### 3.1. Introduction

Victims of intersectional discrimination are faced with complex discrimination and abuse that are not covered within the ambit of antidiscrimination law, even if a number of solutions have been commended. The problem is exacerbated by the fact that these victims seldom seek judicial protection against intersectional discrimination. Yet, the major international human rights instruments are criticized for designating human rights violations as single violations based on independent factors and for ignoring the potential of multiple factors to intersect and create multiple subordination<sup>107</sup>. Various feminist scholars also argue that the theoretical framework of human rights is rigid and with shattered institutions.<sup>108</sup>

This traditional framework fails to unbox the dynamics of status and power and its impact on social hierarchies, hence failing to contest inequalities.<sup>109</sup> For instance, in case of violence against women, international human rights instruments like CEDAW and DEVAW forbid acts of violence in their provisions but do not specify the prohibition of acts of violence against women with disabilities. Over the years, feminist scholars have contributed to intersectional analysis and the call for its integration into the human rights framework. Yet the progress regarding the incorporation of intersectionality into the international human rights framework has been a slow road.<sup>110</sup> In some instances, practice compels an invocation of the best-protected ground of discrimination since this will increase their chances of winning their case before the courts.<sup>111</sup> Other political and legal scholars speculate that the application of intersectionality in

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<sup>107</sup> Ontario Human Rights Commission, 'An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims', (2001, Discussion Paper, Policy and Education Branch. [Available on-line: <http://www.ohrc.on.ca/English/publications>]

<sup>108</sup> Johanna Bond, 'International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations' (2003) 71 *Emory Law Journal* 71, 72

<sup>109</sup> Chayla Haynes and others, 'Toward an Understanding of Intersectionality Methodology: A 30-Year Literature Synthesis of Black Women's Experiences in Higher Education' (2020) 90 *Review of Educational Research* 751 <<http://journals.sagepub.com/doi/10.3102/0034654320946822>> accessed 27 March 2022.

<sup>110</sup> Crenshaw (n 4).

<sup>111</sup> De Beco (n 47).

legal systems undermines the critical and radical foundations of the theory.<sup>112</sup> Whereas other scholars argue for the integration of intersectionality in the human rights framework as fragmented application may lead to irregularity and the application of varied approaches to the same concern.<sup>113</sup> However, despite the text of the human rights instruments that is based on a single-axis approach, the UN treaty bodies that are created by the instruments seem to be moving toward the application of intersectionality in the interpretation of human rights.<sup>114</sup> Truscan and Bourke argue that the specific recommendations by treaty bodies also guide national legal frameworks to pay attention to intersectional discrimination.<sup>115</sup> As a way forward, it has been agreed that adopting the intersectional approach in the application of international human rights would be productive to attain and redress situations of intersectional inequality.<sup>116</sup> The following discussion in this chapter frames the application of the intersectional approach in international human rights law and will lay out a foundation for the discussion in the next chapter, which will draw legal frameworks from the present chapter.

### **3.2. Assessing Major Human Rights Instruments and Progress Towards Intersectionality**

Most of the group-specific international human rights treaties prohibit discrimination on the basis of groups that fall under the remit of the treaties themselves.<sup>117</sup> CRC and the CRPD are the exceptions of group-specific rights as the treaties cross-refer to the rights of different groups. The group-specific treaties, such as the CRC and CRPD, were adopted at a faster time than the general international human rights treaties, so they are familiar with the growing intersectional approach to international human rights. This section presents key instruments that protect the rights of women, particularly sexual and gender-based violence against women with disabilities.

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<sup>112</sup> Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (eds) *Intersectionality and Beyond: Law, power and the politics of location* (Routledge-Cavendish New York 2008) 2.

<sup>113</sup> Bond, (n 108) 71,74.

<sup>114</sup> Truscan and Bourke-Martignoni (n 52).

<sup>115</sup> *ibid.*

<sup>116</sup> Bond (n, 108)

<sup>117</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, (adopted December 1995, entered into force, 4 January) 660 UNTS 195 (CERD) Art 1; 'Convention on the Elimination of All Forms of Discrimination against Women. Adopted by the General Assembly of the United Nations on 18 December 1979' (n 17).

### **3.2.1. Declaration on the Elimination of Violence Against Women (DEVAW)**

DEVAW is one of the most comprehensive instruments defining violence against women and setting up relevant protection mechanisms. The preamble of the instrument clearly recognizes the intersectional vulnerability of women with multiple identities and social situations by providing:

*"Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence."<sup>118</sup>*

The preamble has included women with disabilities in explaining the concern about the vulnerability that some groups of women are faced with. There are also specific provisions which lay out measures and efforts to be made in the protection of WWDs. For instance, Article 4 of the same obliges states to condemn violence against women and prohibits invoking any cultural and religious motives to escape the obligation to do so. The provision also extends the government's obligation to frame a policy and adopt measures toward eliminating violence against women who are especially vulnerable to violence.<sup>119</sup> One can infer from the preamble that the declaration perceived women with disabilities as groups of women who are especially vulnerable to violence. Thus, it lies within the obligation of the government to frame policies and adopt measures to eliminate violence against women with disabilities. The provision also touches upon the work of the United Nations system and other organizations noting the need to integrate the issue of violence against women, especially those vulnerable to violence, into ongoing programmes.<sup>120</sup>

### **3.2.2. Convention on the Rights of Persons with Disabilities (CRPD)**

CRPD is perceived as one of the international human rights instruments that better deals with the rights and protection of women with disabilities, as it clearly acknowledges the greater risk that women and girls with disabilities face in respect of violence and recognizes the diversity

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<sup>118</sup> *Declaration on the Elimination of Violence against Women, (adopted 20 December 1993, entered into force 23 February 1994), UNGA RES/48/104 (DEVAW), Preamble.*

<sup>119</sup> *Ibid, Art 4(1).*

<sup>120</sup> *Ibid, Art (4)(1)(e).*

of people with disabilities in the preamble<sup>121</sup>. In addition to the provisions which address gender, CRPD clearly indicated the fact that women with disabilities are subject to 'multiple discrimination'.<sup>122</sup> Thus, one can infer that the CRPD follows an intersectional approach in the substantive legal protection of women with disabilities. As laid out under Article 6 (1) of the CRPD;

*"States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure their full and equal enjoyment of all human rights and fundamental freedoms".*

Article 16(1) of the CRPD also obliges state parties to devise suitable legislative and administrative measures that confer protection for persons with disabilities from violence and abuse by taking into consideration their 'gender-based aspect'.<sup>123</sup> Regarding prevention, the provision sets out the obligation of the state parties to provide gender and age-inclusive information on how to prevent and report incidents of violence and to independently monitor disability facilities to prevent exploitation, violence and abuse.<sup>124</sup> In addition, the government's obligation to make sure that recovery, rehabilitation and reintegration service for persons with a disability takes into account gender and age-specific needs is pointed out. The provision also emphasizes on identification, investigation, and prosecution of violence by rendering states obliged to craft legislation and policies to that effect.<sup>125</sup>

### **3.2.3. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

The CEDAW convention obliges states to promote, fulfil and protect the human rights of people with disabilities without discrimination of any kind.<sup>126</sup> The convention also provided that everyone is equal before the law and emphasized that PWDs shall be accorded equal protection without any distinction as to their identity<sup>127</sup>. However, the convention does not adopt explicit protections for WWDs against violence.

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<sup>121</sup> CRPD (n 15), Preamble.

<sup>122</sup> *Ibid*, Art 6.

<sup>123</sup> *Ibid*, Art 16.

<sup>124</sup> *Ibid*, Art 16(2) (3).

<sup>125</sup> *Ibid*, Article 16(4).

<sup>126</sup> CEDAW (n 17) Art 2.

<sup>127</sup> *Ibid*.

### 3.2.4. Convention on the Rights of the Child (CRC)

Article 2 of the CRC provides that states parties are obliged to protect the rights of the child under the convention without discrimination based on various identities, including disability.<sup>128</sup> CRC was the first human rights treaty that included specific reference to disability as a ground of discrimination. Indubitably, article 23 of the CRC is exclusively dedicated to the rights and needs of children with disabilities, which obliges states to recognize the special needs of children with disability.<sup>129</sup>

### 3.2.5. The Work of Treaty Bodies: Towards Intersectional Approach?

The 10<sup>th</sup> meeting of chairpersons of the treaty bodies in 1998 is acknowledged for having set the rhythm in terms of integrating gender in their respective works.<sup>130</sup> The detailed deliberation of integration of gender in the works 3.3. of the treaty bodies has also led to the acknowledgement of the need to investigate intersectional inequalities and recommendations to clarify the gender dimension of rights.<sup>131</sup> The report recommended studies to explore the intersection of race and gender in the context of the CEDAW.<sup>132</sup> Hence, each treaty body responsible for monitoring compliance with each treaty could explore intersections of identities, resulting in multiple marginalization's. The report made by the then special rapporteur for violence against women in 2001 called for action for awareness raising on multiple discrimination faced by marginalized women and mainstreaming of intersectional approach.<sup>133</sup> A resolution adopted by the UN Commission on Human Rights in 2002 titled "Integrating the Human Rights of Women throughout the United Nations System" clearly emphasized the need to examine the intersection of multiple forms of discrimination.<sup>134</sup>

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<sup>128</sup> *Convention on the Rights of the Child, (adopted 20 November 1989, entry into force 2 September 1990), UNGA RES/44/25, 3 (CRC) Art 2..*

<sup>129</sup> *Ibid, Art 23*

<sup>130</sup> *Secretary-General, Integrating the Gender Perspective into the Work of United Nations Human Rights Treaty Bodies', (HRI/MC/1998/6, 14–18 September 1998) [Para 112].*

<sup>131</sup> *Johanna Bond, 'Evolution of Intersectionality in the UN Treaty Bodies' in Johanna Bond, Global Intersectionality and Contemporary Human Rights (Oxford University Press 2021) <<https://academic.oup.com/book/39803/chapter/339913733>> accessed 1 June 2023.*

<sup>132</sup> *Secretary General (n 130) [Para 11].*

<sup>133</sup> *United Nations, '15 Years of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences—A Critical Review' (1994-2009).*

<sup>134</sup> *UNHRC, 'Resolution on the Integration of the Human Rights of Women and the Gender Perspective', (16 April 2002), E/CN.4/2002/L.59.*

Recently it has also become common to see mention of intersectional discrimination and vulnerability in the general recommendations of the human rights treaty bodies, including the CERD, the CRC, the Human Rights, and the CESCR Committees.<sup>135</sup>

### **3.2.6. The CERD Committee**

Though the Committee's work is limited to racial discrimination issues, the CERD committee acknowledged that sexual violence can be committed owing to one's identity<sup>136</sup>. The Committee further adopted General recommendation 25, which expressly deals with the topic of gender-related Dimensions of Racial Discrimination<sup>137</sup>. The recommendation looked into situations where women are affected by racial discrimination differently owing to their different life experiences. The next general recommendation by the Committee also specifically discussed intersectionality and indicated that intersectionality spreads out grounds of racial discrimination.<sup>138</sup> However, the Committee did not particularly deal with the dimension of gender and disability within racial discrimination. Thus, though the Committee progressed in acknowledging intersectional approaches, the Committee's jurisprudence has not yet expanded to explore multiple forms of intersectional discrimination or vulnerability.

### **3.2.7. The Human Rights Committee**

The Human Rights Committee, in general comment 28, implied that discrimination that is based on gender is usually interlinked with other grounds. The Committee did not mention the intersection between gender and disability. However, it included the term 'other status' in the text of the comment.<sup>139</sup>

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<sup>135</sup> UN Committee for Economic, Social and Cultural Rights, *General Recommendation No19 in 'Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies' (2 July 1994) UN Doc. E/C.12/GC/20, Para 34.*

<sup>136</sup>UN Committee on the Elimination of Racial Discrimination, *General Recommendation No. 25, 'Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies' (20 March 2).*

<sup>137</sup> *Ibid.*

<sup>138</sup> UN Committee on the Elimination of Racial Discrimination, *'General Recommendation no. 32 the meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination' (24 September 2009) CERD/C/GC/32.*

<sup>139</sup>Human Rights Committee, *General Comment No. 28 (The equality of rights between men and women), 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' 29 March 2000, HRI/GEN/1/Rev.9, Article 3, para 30.*

It is noted in paragraph 30 of the general comment that;

*"Discrimination against women is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinions, national or social origin, property, birth or **other status**. States parties should address the ways in which any instances of discrimination on other grounds affect women in a particular way and include information on the measures taken to counter these effects."*<sup>140</sup>

The text of the general comment suggests that states explain steps taken to negotiate the effects of the intertwined grounds of discrimination. However, particular mention has not been given to violence and how the interwind grounds result in different experiences vis-à-vis measures taken to that effect.

### **3.2.8. The CRC Committee**

The convention on the rights of children was the first treaty that specifically referred to disability in dealing with protections provided for children. The Committee on the rights of the child has specifically adopted General comment No. 9 on children with disabilities.<sup>141</sup> The Committee has focused on disability-based discrimination<sup>142</sup>, unlike other human rights treaty bodies, which dealt with disability-based discrimination under "other status."<sup>143</sup>

When explaining the importance of explicit mention of disability, the Committee underlined that children with disability are more vulnerable, and the combination or intersection of factors, including gender and indigenous status, exposes them to multiple forms of discrimination. The general comment also adds that girls with disabilities are often even more vulnerable to discrimination due to gender discrimination.

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<sup>140</sup> Ibid

<sup>141</sup> *Committee on the Rights of the Child General Comment No. 9(The rights of children with disabilities)*, 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' 27 February 2007, CRC/C/GC/9.

<sup>142</sup> *Wouter Vandenhoele, 'Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies'*, (2005), Antwerpen/Oxford, Intersentia, 170-172

<sup>143</sup> Ibid

It is laid out under paragraph 10 of the General Comment:

*"In this context, States parties are requested to pay particular attention to girls with disabilities by taking the necessary measures, and when needed, extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society".*<sup>144</sup>

Though the general comment did not specifically mention violence and abuse against children while referring to the intersection of factors and multiple discrimination, the general comment has specifically in paragraph 42 dealt with 'Violence, Neglect and Abuse' by indicating that children with disability are more vulnerable to violence due to various compounded factors. The general comment also urged state parties to take necessary measures for the prevention of abuse, including taking all necessary legislative measures required to punish and remove perpetrators from the home.<sup>145</sup> The Committee also encourages state parties to take all appropriate measures to implement the general and specific recommendations provided under the general comment. Hence, the provisions should be applied *visa vis* the consideration of further vulnerability of girls with disabilities.<sup>146</sup>

### **3.2.5. CEDAW Committee**

The general recommendation adopted by the CEDAW Committee in 1991 has made specific recognition of the 'double discrimination that women with disabilities face,<sup>147</sup> while the next general recommendation adopted in 2004 clarified the basis of multiple forms of discrimination directed at women, such as "race ethnic or religious identity, disability, age, class, caste or other factors."<sup>148</sup> By acknowledging that cases of intersectionality create entirely new forms of discrimination, the recommendation also commended state parties to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.<sup>149</sup>

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<sup>144</sup> *CRC Committee, General Comment No. 9, (The rights of children with disabilities), 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' Doc. CRC/C/GC/9, 27 February 2007, Para 8.*

<sup>145</sup> *Ibid, para 42.*

<sup>146</sup> *Ibid, para 43.*

<sup>147</sup> *CERD Committee (n, 138), 'General Recommendation no. 18.*

<sup>148</sup> *Ibid, General Recommendation No. 25 on temporary special measures, 2004.*

<sup>149</sup> *Ibid, Para 12.*

Consecutive general recommendations adopted by the Committee also appealed to an intersectional approach though the aspect of violence against women with disabilities has not been independently deliberated with sufficient attention. Accordingly, while addressing the issue of women in conflict prevention, conflict and post-conflict situations, recommendation number 30 alluded to the fact that women are not a homogeneous group, and their needs and experiences vary accordingly.<sup>150</sup> In addition, the recommendation explicitly pointed out the need to attend to the special needs of conflict-affected girls by considering intersecting forms of discrimination.<sup>151</sup> The latter recommendation, general recommendation number 33 on women's access to justice, notes that "discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women."<sup>152</sup>

In general, the CEDAW committee recognized intersectionality as an overarching principle in defining the scope of the obligation of states.<sup>153</sup> Hence, governments are obliged to adopt and pursue policies and programmes designed to eliminate intersecting forms of discrimination.<sup>154</sup> For instance, in the *RBP vs the Philippines* case that was entertained by the CEDAW Committee, the Committee, by referring to recommendation number 18 on women with disabilities, recommended that sign language interpretation should be provided in all stages of legal proceedings and that any criminal proceeding should be entertained at an environment without any prejudice against women with disability.<sup>155</sup>

### **3.2.6. CRPD Committee**

CRPD committee acknowledges that discrimination affects individuals differently depending on the various situation in the life cycle. The CRPD Committee states that "girls with disabilities face intersectional discrimination on account of their age, gender, sex and disability

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<sup>150</sup> *Ibid*, General Recommendation No. 30 on women in conflict prevention, conflict and post conflict situations, UN Doc. CEDAW/C/GC/30, 1 November 2013, Para 6.

<sup>151</sup> *Ibid*, para 7.

<sup>152</sup> *Ibid*, General Recommendation No. 33, Women's access to justice, UN Doc. CEDAW/C/ GC/33, 3 August 2015, Para 8, where the Committee states, "in addition, discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women".

<sup>153</sup> *Ibid*, General Recommendation No 28:

<sup>154</sup> *Ibid*, para 18.

<sup>155</sup> *R.P.B. v the Philippines*, [ 12 March 2014) Communication No. 34/2011, UN Doc. CEDAW/C/57/D/34/2011

when subject to sexual assault".<sup>156</sup> The CRPD Committee has clearly scanned situations of multiple and intersecting forms of discrimination against women and girls with disabilities,<sup>157</sup> and that multiple discrimination is a situation where a person can experience compounded and aggravated discrimination on more than one ground.<sup>158</sup> The Committee specified that grounds for discrimination include disability and gender among the various grounds of discrimination. The Committee on a general discussion on women and girls with disabilities held in April 2013 during its 9th session highlighted violence, sexual and reproductive health and rights and discrimination as three of the major human rights violations that impact the exercise of their rights. Furthermore, concluding observations issued by the Committee on women with disabilities also condemn the prevalence of multiple discrimination and intersectional discrimination against WWDs<sup>159</sup>, on account of their gender, disability and other factors<sup>160</sup> which are not sufficiently addressed in legislation and policies.<sup>161</sup>

### **3.2.7. Relevant Regional Human Rights Frameworks in Light of Intersectionality**

This part explores how the African regional human rights framework accommodates intersectionality and whether intersectionality has been embraced in the analysis and interpretation of human rights guarantees by the treaty bodies in the region.

### **3.2.8. African Charter on Human and Peoples Right (ACHPR)**

Like the UDHR, ICCPR and ICESCR, the ACHPR lays down general provisions on fundamental human rights. Article 2 of the charter provides that individuals are entitled to the

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<sup>156</sup> *UN Committee on the Rights of Persons with Disabilities, General comment No.3 Women and girls with disabilities, 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' 2 September 2016, CRPD/C/GC/3.*

<sup>157</sup> See <http://www.un.org/womenwatch/enable/>.

<sup>158</sup> *UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, 2004.*

<sup>159</sup> *UN Committee on the Rights of Persons with Disabilities (CRPD), Concluding observations on the initial report of El Salvador: Committee on the Rights of Persons with Disabilities / prepared by the Committee, 8 October 2013, CRPD/C/SLV/CO/1 Para 17.*

<sup>160</sup> *UN Committee on the Rights of Persons with Disabilities (CRPD), Concluding observations on the initial report of Austria / adopted by the Committee [on the Rights of Persons with Disabilities] at its 10th session, 2-13 September 2013, 30 September 2013, CRPD/C/AUT/CO/1.*

<sup>161</sup> *CRPD (n 25.)*

rights and freedom recognized under the charter without distinction of any kind based on various discrimination grounds. However, the charter does not list disability as one of the grounds and instead puts the clause 'other status' to include other grounds which are not explicitly listed. Article 18 of the charter obliges the state to protect women from discrimination and calls upon states to accord special protection measures for PWDs. However, the ACHPR does not reflect an intersectional approach by providing specific protection to WWDs. However, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) was adopted to advance women's rights.<sup>162</sup>

### **3.2.2. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).**

The text of the Maputo Protocol is acknowledged for demonstrating a better commitment to an intersectional approach in the application of human rights guarantees.<sup>163</sup> Since the Protocol was adopted later than most of the UN treaties, it seems to reflect a more contemporary understanding of the rights of women. The Protocol provides special protection for women in distress, marginalization, pregnant and nursing women<sup>164</sup>, and especially lays out rights and protection of elderly women including from sexual abuse recognizing the intersectional vulnerability they face<sup>165</sup>. Interestingly, the Protocol also specially deals with the rights and protection of women with disabilities, including by commensuration for their physical, economic and social needs. Most importantly, the provision obliges states to "ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability, and the right to be treated with dignity"<sup>166</sup>. Here, the Maputo Protocol fosters an intersectional approach that recognizes that women with disabilities are differently positioned and intersectional vulnerable and reflects a growing commitment to intersectionality. The fact that the Protocol identified several grounds like age, economic status, social status and ability as possible intersecting grounds with gender indicates a more nuanced, intersectional understanding of human rights violations.<sup>167</sup> The Maputo Protocol hence bestows

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<sup>162</sup>*African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, (Adopted 11 July 2003).*

<sup>163</sup> Bond (n 131).

<sup>164</sup> *Maputo Protocol (n,161) Art 24(a) (b).*

<sup>165</sup> *Ibid, Art 22.*

<sup>166</sup> *Ibid, Art 23.*

<sup>167</sup> Bond (n 131).

hope for advancement in the pursuit of an intersectional approach to address human rights violations in Africa.

### **3.2.3. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.**

The Protocol is one of the human rights instruments that deal with the rights of PWDs in a comprehensive manner. The Protocol obliges states to review laws and policies that affect the enjoyment of rights by PWDs.<sup>168</sup> Regarding the rights of WWDs, the Protocol states that WWDs have the right to be protected from SGBV and to be provided with comprehensive support when faced with a violation. The Protocol also calls upon states to integrate gender perspectives in all legislations, policies and activities that affect WWDs.<sup>169</sup>

## **CHAPTER FOUR**

### **PROTECTION OF WOMEN WITH DISABILITIES FROM SEXUAL AND GENDER BASED VIOLENCE IN THE ETHIOPIAN LEGAL SYSTEM**

#### **4.1. Introduction: Setting the scene**

Around 15 million people with disabilities live in Ethiopia, which is 17.6% of the total population.<sup>170</sup> PWDs of both genders are primarily vulnerable to abuse, but women with disabilities are more vulnerable to violence due to "double discrimination" as female gender and disability are viewed as bases of vulnerability and disempowerment<sup>171</sup>. International and national laws generally prohibit violence and abuse, but violence against women with disabilities is difficult to combat legally.<sup>172</sup> As a result, domestic courts are uncertain as to whether the various overlapping forms of discrimination should be properly assessed and considered.<sup>173</sup> However, the constitutional loopholes and impact expressed by many feminist

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<sup>168</sup> *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa*, Art 8.

<sup>169</sup> *Ibid*, Art 22.

<sup>170</sup> *World Bank and World Health Organization: World Report on Disability*, Washington, D. C., 2011.

<sup>171</sup> *Selamawit Getachew, Gurmesa Tura Debelew and Misra Abdullahi, 'Gender-Based Violence and Associated Factors Among Women with Disabilities in Jimma Town, Ethiopia' (2022) 14 International Journal of Women's Health 1531* <<https://www.dovepress.com/gender-based-violence-and-associated-factors-among-women-with-disabili-peer-reviewed-fulltext-article-IJWH>> accessed 27 March 2023.

<sup>172</sup> *Dr Konstantina Davaki and others, 'Discrimination Generated by the Intersection of Gender and Disability'*.

<sup>173</sup> *Aarti Iyer, Toni Schmader and Brian Lickel, 'Why Individuals Protest the Perceived Transgressions of Their Country: The Role of Anger, Shame, and Guilt' (2007) 33 Personality and Social Psychology Bulletin 572* <<http://journals.sagepub.com/doi/10.1177/0146167206297402>> accessed 2 June 2023.

thinkers and human rights defenders in Ethiopia continue to be cast aside<sup>174</sup>. The current constitution has adopted a political structure based on the question of nationality<sup>175</sup>. However, it is important to note that women inevitably suffer different forms of injustice other than the injustice they face due to their ethnicity. Hence, ethnicity cannot be the sole criterion to remedy the various forms of injustice. Ethiopia is also a party to many international human rights instruments that provide protection against violence. Yet, women continue to be among the most disadvantaged and vulnerable groups compared to men. Thus, scholars have suggested for integration of an intersectional approach that also looks into groups with intersectional vulnerability to the Ethiopian constitution<sup>176</sup>. As indicated above, Ethiopia is a party to the various international human rights instruments discussed in chapter 3, except for the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa which gives improved protection for WWDs.

Article 9 of the FDRE Constitution provides that "all international treaties ratified by Ethiopia are integral parts of the law of the land"<sup>177</sup>. Moreover, according to article 13 (2) of the constitution, fundamental rights and freedoms are to be interpreted in a manner conforming to the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.<sup>178</sup> Ethiopia is therefore obliged to apply the protections provided by the treaties and interpret fundamental freedoms, including the rights of vulnerable groups such as WWDs, accordingly. This chapter, therefore, examines the Ethiopian constitution, criminal law, family law, labour and employment proclamations and federal Organs' establishment proclamation on the extent of protection they provided for WWDs against SGBV. Ethiopia has also taken the initiative to adopt a specific proclamation for the protection of the rights of PWDs. Due to the initial stage of the draft and ongoing process, the author could not put a viewpoint on the final draft of the proclamation.

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<sup>174</sup> Teguadda Alebachew, "How and Why Constitutions Are Important for Gender Equality," paper presented at the conference: *Re-politicizing the Gender Equality Question* (September 30, 2021, Addis Ababa, Ethiopia).

<sup>175</sup> *Ibid.*

<sup>176</sup> Getachew, Debelew and Abdullahi (n 170).

<sup>177</sup> FDRE Constitution (n 12) Art 9.

<sup>178</sup> *Ibid.*, Art 13 (2).

#### **4.1.1. Substantive Legal Protections against SGBV on WWDs under the Ethiopian Legal Framework**

#### **4.1.2. Does Ethiopia Have a Separate Sexual Offence Act?**

The Ethiopian legal framework does not constitute a separate sexual offence act that defines and punishes crimes such as sexual assaults, including rape. The lack of a separate sexual offence act that includes emphasis on WWDs has increased the challenge of providing comprehensive protection for women in general and WWDs from SGBV in particular. The awareness of law and justice enforcement bodies with regards to SGBV on WWDs and lack of age and disability accommodation is also a challenge that prevents from accessing justice when faced with violence. Had the Ethiopian government adopted a separate body of law to punish sexual offences, in line with the CRPD recommendation, which requires a specific legal framework dealing with WWDs<sup>179</sup>, a comprehensive definition of SGBV, and proper accommodation with mainstreaming of WWDs would have been possible. The lack of awareness of law and justice officials would also be improved with comprehensive definitions, strong legislation, and implementation<sup>180</sup>. A victim that was interviewed in a documentary produced by the Ethiopian Women with Disabilities Network Association stated that a police officer joked with her when she tried to file a police report for a rape crime committed on her by saying 'you are lucky if someone is tempted to rape you' and turned her back by giving her 100 ETB when she insisted on filing the report.<sup>181</sup> In addition, due to the lack of a comprehensive sexual offence act, various forms of GBV, such as verbal abuse, physiological abuse and socio-economic abuse, are not clearly recognized as such, and there are no specific protections accorded to WWDs due to their intersectional vulnerability. A public prosecutor from the Addis Ketema branch in Addis Ababa explained that various cases of abuse, such as starving WWDs and psychological abuse, are not properly covered in the criminal law and criminal procedure; hence most cases are dropped before proceeding to a formal complaint.<sup>182</sup> Meanwhile, WWDs are the most vulnerable to such abuses due to their physical and financial dependence on their abusers.<sup>183</sup> This is one justification that supports the need to adopt a

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<sup>179</sup> CRPD Committee (n 155)

<sup>180</sup> Getachew, Debelew and Abdullahi (n 170).

<sup>181</sup> Extract of interview with a victim of rape from the documentary produced on violence against women by EWDNA (Addis Ababa, Ethiopia 2022).

<sup>182</sup> Interview with Daritmariam Fekadu, Public Prosecutor, (Addis Ababa, 9 May 2023).

<sup>183</sup> Dessie, Bekele and Bilgeri (n 32).

separate sexual offence act that can accommodate intersectional vulnerability and various scenarios of SGBV.

#### **4.1.3. The Ethiopian Constitution**

Article 25 of the FDRE constitution places a general equality clause which acknowledges equal and effective protection of all by the law without discrimination based on different grounds.<sup>184</sup> While the provision lists out some prohibited grounds of discrimination, such as sex and race, disability was not listed as a specific ground of discrimination. It is indeed presumed that disability and other relevant grounds are implicitly acknowledged under the category of 'other statuses'. However, the implicit inclusion under 'other status' lacks emphasis on the most vulnerable groups who face intersectional discrimination on various levels. Similarly, the provision dedicated to women's rights does not specifically address the rights of WWDs across the various equality and protection guarantees under the provision. Particularly, the constitution, under Article 35(4), has obliged the state to protect women from violence in the context of harmful customs. The provision reads, "the State shall enforce the right of women to eliminate the influences of harmful customs".<sup>185</sup> Thus, there is no specific mention of WWDs, and the provision does not endeavour to acknowledge the intersectional vulnerability of WWD to harmful customs.

Nevertheless, there is a particular provision of the constitution that safeguards the rights of PWD by obliging the government to provide assistance to PWD.<sup>186</sup> However, the approach of the provision is more of a medical approach<sup>187</sup> to disability rather than a rights-based approach, as it emphasizes assistance other than an explicit provision that gives exceptional protection for women with disabilities. Though it is generally understood that the provisions that bestow protection for women in general also protect women with disabilities, it can be argued that the constitution has not given due recognition to the intersectional vulnerability of WWDs. In this regard, it is fair to conclude that the FDRE Constitution follows and does not adhere to the intersectional approach that is required by the growing human rights consensus within the human rights treaty bodies.

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<sup>184</sup> *FDRE Constitution (n 12) Art 25.*

<sup>185</sup> *Ibid, Art 35(4).*

<sup>186</sup> *Ibid, Art 41 (5).*

<sup>187</sup> *Sullivan (n, 88).*

#### 4.1.4. The Ethiopian Criminal Code

The revised criminal code of Ethiopia does not reserve a separate section that deals with the intersectional vulnerability of WWDs, except for the incorporation of some of the provisions in different parts of the law.<sup>188</sup> The criminal code criminalizes most of the violence categories that fit into the definition of SGBV as laid down in Article 1 of DEVAW, which defines SGBV as any act that can possibly result in physical, sexual, or psychological harm to women.<sup>189</sup> Article 564 of the criminal code criminalizes violence against a married partner, including those in an irregular union.<sup>190</sup> This provision is particularly relevant for WWDs, who often face domestic violence than women with no disabilities.<sup>191</sup> However, the provision has not specifically referenced WWD owing to their intersectional vulnerability. Other SGBV concerns addressed in the criminal code include early marriage<sup>192</sup>, FGM<sup>193</sup>, rape<sup>194</sup>, and exploitation.<sup>195</sup> For instance, Article 620(2) (C) of the criminal law places a specific mention of WWDs among the lists of crimes that result in more punishment than the one provided in the general provision as imprisonment of 5-15 years.<sup>196</sup> The provision particularly states that when rape crime is committed on a woman incompetent of recognizing the nature or outcomes of the act due to physical or mental illness, the punishment shall constitute 5-20 years of rigorous imprisonment<sup>197</sup>. Another provision that outlaws violence against WWDs includes Article 588 of the criminal code, which criminalizes the abduction of defenceless or unconscious women by stating the following:

*"Whoever knowing her conditions, intentionally carries off an **insane, feeble-minded or retarded** woman, one not fully conscious, or one who is incapable or has been rendered*

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<sup>188</sup> Proclamation No. 414/2004, the Criminal Code as published in a separate volume of the Federal Negarit Gazeta under and came into force on (9 May 2005).

<sup>189</sup> DEVAW (n 118) Art 1.

<sup>190</sup> Criminal Code (n 185) Art 564.

<sup>191</sup> UNFPA, *Women and Young Persons with Disabilities. Guidelines for Providing Rights-Based and Gender-Responsive Services to Address Gender-Based Violence and Sexual and Reproductive Health and Rights*, (2019)50.

<sup>192</sup> Criminal Code (n 185) Art 648.

<sup>193</sup> *Ibid*, Art 565-6.

<sup>194</sup> *Ibid*, Art 620-28.

<sup>195</sup> *Ibid*, Art 634.

<sup>196</sup> *Ibid*, Art 620.

<sup>197</sup> *Ibid*, Art 620(2) (c) .

*incapable of defending herself or of offering resistance, is punishable with rigorous imprisonment from five years to fifteen years".<sup>198</sup>*

While the particular emphasis on the vulnerability of women with disabilities is commendable, the use of derogatory terms such as 'insane' and 'retarded' in the words of the provision questions the proper recognition of WWDs in the law. Furthermore, such use of words does not adhere to the definitions accorded in international laws such as CRPD, which defines PWDs as those hindered from effective participation due to long-term 'physical, mental, intellectual, or sensory **impairments**'.<sup>199</sup> A similar provision which addresses women with intellectual impairment, yet with derogatory words, is Article 623 of the criminal code. The provision states the following:

*"Whoever, knowing of his victim's incapacity, but without using violence or intimidation, performs sexual intercourse, or commits a like or any other indecent act, with **an idiot, with a feeble-minded or retarded, insane** or unconscious person, or with a person who is for any other reason incapable of understanding the nature or consequences of the act, is punishable, according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding fifteen years".*

The specific emphasis given to women with intellectual disabilities owing to their vulnerable circumstance indicates a commitment to an intersectional approach; however, the wording in the provisions is derogatory and undermine WWDs. One principal area of concern in concluding observation of the CRPD Committee on Ethiopia's initial report was the continued use of derogatory terms in legislation and policies to refer to PWDs, such as "insane", "infirm", and "deaf-mute".<sup>200</sup> The Committee recommends the elimination of derogatory words from legislation and compliance with the human rights-based model of disability.<sup>201</sup>

Despite the use of derogatory words such as "invalid person", another provision that aims to protect WWDs is Article 84 of the code, which lists general aggravating circumstances.<sup>202</sup> Particularly Article 84(1)(e) lists an offence committed against an "invalid person" as a general

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<sup>198</sup> *Ibid*, Art 588.

<sup>199</sup> *CRPD (n 15) Art 1*.

<sup>200</sup> *Concluding observations on the initial report of Ethiopia, Committee on the Rights of Persons with Disabilities, CRPD/C/ETH/CO/1, 4 November 2016. Para 5 and 6.*

<sup>201</sup> *Ibid*, Para 6.

<sup>202</sup> *Criminal Code (n 185) Art 84.*

aggravating circumstance. Hence, the provision can be raised to seek aggravated punishment within the purview of sexual offences committed against WWDs. It can be concluded that criminal law accords special and general aggravating circumstances in terms of providing better protection of WWDs from SGBV. However, in terms of cases that do not fall under the special aggravating circumstance, ordinary provisions of the code for the protection of rights and prohibition of crime will be applicable. For instance, for crimes without special aggravating circumstances, only general aggravating circumstances will be applied and cases of SGBV that neither fall under special aggravating circumstances nor general aggravating circumstances might be overlooked. In addition, the insignificant increase of sentence level in aggravating circumstances (only by one sentence level)<sup>203</sup> narrows the protection provided under the law.

Moreover, one of the gaps in Ethiopia's criminal law system, which by practice seeks evidence beyond a reasonable doubt<sup>204</sup>, is the fact that it does not consider the nature of SGBV crimes and the position of WWDs, who mostly do not recognize the perpetrators. According to the chairperson of EWDNA<sup>205</sup>, most cases that come to the attention of EWDNA are not taken to court as the cases do not fulfil the evidence required in criminal law. When interviewed by the writer, a prosecutor recalled a case that was opened in Amhara Region, South Wollo Zone, in Albuko Woreda Court.<sup>206</sup> Accordingly, the victim had reported a rape case and a complaint was instituted based on medical evidence. However, after the hearing was conducted, the accused was set free since the survivor could not identify the perpetrator due to her visual impairment and the evidence was challenged. The prosecutor further stated that the same person was later accused of another rape allegation and sentenced to 10 years.

#### **4.1.5. Revised Family Code**

Proclamation No. 213/2000 revised the old civil code by providing better protection for women and children and revoking discriminatory laws.<sup>207</sup> The detailed provisions of the law that deal with marriage, dissolution of marriage, property, and duties do not specifically mention WWDs or do not exhibit an intersectional approach. Yet, some of the protections laid out in the same

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<sup>203</sup> Yilma, Kassahun Molla. 'Sentencing in Ethiopia: Sanctions, guidelines and reform', (2020)33 *South African Journal of Criminal Justice*, 148.

<sup>204</sup> Hanna Araya Selassie, 'the Standard of Proof in Criminal Proceedings: the threshold to Prove Guilt under Ethiopian Law', (2014) 8 *MIZAN LAW REVIEW*, 1.

<sup>205</sup> Interview with Ms. Dibaba Bacha, chairperson of EWDNA (Addis Ababa, Ethiopia, 7 May 2023).

<sup>206</sup> Interview with Ms Tekta Tewodros, Public Prosecutor (South Wollo, Albuko Woreda, 10 May 2023).

<sup>207</sup> Mehari Redai, 'Some Points for the better understanding of the Revised Family Law', (1999), 2.

are protective of WWDs under the rights and protections for all women. For instance, the Family Code's protections accorded to both women and men is the requirement of free and full consent.<sup>208</sup> This provision is particularly relevant for women with disabilities as they are more vulnerable to fraud and deceit<sup>209</sup>. Another relevant provision in the protection of women that includes WWDs is the administration of personal property whereby each spouse can administer their personal property, receive the income, and freely dispose of the same income.<sup>210</sup> This provision also protects women, particularly WWDs, from economic abuse for which they are at greater risk due to various barriers.<sup>211</sup> To the contrary, article 51(1) of the code, state that *"Where one of the spouses is **under disability**, absent, abandons his family or is away or, for any other reason, is not in a position to give his consent, the other spouse shall alone carry out the duties in managing family and children."*<sup>212</sup>

The fact that the family law puts disability as one ground for the inability to manage family and children is detrimental for WWDs as this can potentially exclude them from decision-making, thereby increasing their vulnerability to violence. A WWD who is a survivor of domestic violence stated that she was excluded from any financial and family decision in her marriage due to her hearing and physical impairment and alluded that her exclusion made her vulnerable to economic abuse and later to physical abuse in the house.<sup>213</sup> In addition, the fact that the revised family law does not recognize intimate partner violence has created a gap in the protection of women in marriage from violence, particularly WWDs, who often are more vulnerable to intimate partner violence than women without disabilities.<sup>214</sup>

#### **4.1.6. Labour and Employment Proclamations in Ethiopia**

Ethiopia utilizes three legislations on employment, the labour proclamation no. 1156/2019, which governs employment relationships in the private sector, the civil servant's proclamation

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<sup>208</sup> Proclamation No. 213/2000, *The Revised Family Code Ethiopia*, (4 July 2000), Article 6, 13 and 14.

<sup>209</sup> *Selamawit Getachew, Gurmessa Tura Debelew and Misra Abdullahi, 'Gender-Based Violence and Associated Factors Among Women with Disabilities in Jimma Town, Ethiopia' (2022).*

<sup>210</sup> *The Revised Family Code (n 205) Art 59.*

<sup>211</sup> *Understanding Economic and Financial Abuse and Disability in the Context of Domestic and Family Violence, Gendered Violence Research Network, (September 2021), 32.*

<sup>212</sup> *The Revised Family Code (n 204), Art 5.1*

<sup>213</sup> *Interview with survivor of domestic violence (name omitted due to consent), (Addis Ababa, Ethiopia, 7 May 2023).*

<sup>214</sup> *Sarah R Meyer and others, 'Disability and Intimate Partner Violence: A Cross-Sectional Study from Mwanza, Tanzania' (2023) 16 Disability and Health Journal 101404 <<https://linkinghub.elsevier.com/retrieve/pii/S1936657422001583>> accessed 2 June 2023.*

No. 1064/2018, which applies to the public service sector and the right to employment of persons with disability proclamation No. 568/2008, which applies to both the private and public service sectors.

#### **4.1.6.1. Labour Proclamation Number 1156/2019**

The proclamation under Article 2 (11) and (12) defines sexual harassment and sexual violence, respectively. And the proclamation also has a discrimination clause prohibiting exclusion on the basis of various grounds, including disability, that results in unequal treatment of employees.<sup>215</sup> The proclamation also accords specific protection for female workers by prohibiting discrimination against sex and orientation.<sup>216</sup> Another prohibited act by employers on the proclamation is acts of sexual harassment and sexual assault in the workplace.<sup>217</sup> Moreover, the proclamation has devised an arrangement where severance pay is affected if the worker resigns due to sexual violence or harassment, which the employer did not appropriately address.<sup>218</sup> In addition, working conditions and protection for female employees, including the prohibition of working under hazardous conditions for health, are listed under Article 87 of the proclamation. However, while stating the protections accorded to female workers, the proclamation does not specifically accord protection for WWDs or indicate an approach of intersectionality in line with international and regional laws.

#### **4.1.6.2. Civil Servant Proclamation No. 1064/2017**

In addition to defining "sexual harassment" and laying out various protections for women and PWDs separately, the proclamation under article 70(13) punishes sexual harassment by rigorous disciplinary penalty. However, the legislation does not give a specific emphasis on WWDs and does not explicitly recognize intersectional vulnerability.

#### **4.1.6.3. The Right to Employment of Persons with Disability Proclamation No. 568/2008**

Unlike the labour proclamation, the legislation for the right of employment of PWDs clearly acknowledges the multiple burdens that WWDs face. As laid down in Article 6 (1) (b) of Proclamation number 568/2008, employers are obliged to arrange all reasonable accommodations for women with WWDs owing to the multiple burdens that arise from their gender and disability. Similarly, there is an obligation to protect women with disabilities from

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<sup>215</sup>Proclamation number 1156/2019, Labour Proclamation, 25<sup>th</sup> Year No. 89 Addis Ababa 5<sup>th</sup> (September 2019).

<sup>216</sup> *Ibid*, Article 14 (1) (b).

<sup>217</sup> *Ibid*, Article 14 (1) (h).

<sup>218</sup> *Ibid*, Article 39 (1).

sexual violence that occurs in workplaces.<sup>219</sup> Hence, the fact that WWDs were afforded protection specifically shows that there is a better understanding of an intersectional aspect of gender and disability in the context of employment.

#### **4.1.7. Proclamation No.1097/2018 Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation.**

Another proclamation which provided equality and discrimination clause for women and PWDs is Proclamation No. 1097/2018, which lays out the powers and duties of federal executive organs. According to article 10 (3), each ministry has the power and duty to ensure that the policies, laws, development programs and projects it formulates benefit women, children, and youth. And then Article 10 (4) urges the ministers to create "conditions whereby persons with disabilities, the elderly, and segments of society vulnerable to social and economic problems benefit from equal opportunities and full participation."<sup>220</sup> However, the proclamation has not included a provision to bestow power and duty on the ministers for the protection of women and PWDs from violence of any kind. Furthermore, the provision does not reflect an intersectional approach as it does not mention groups with intersectional vulnerability but rather single-based discrimination.

#### **4.1.8. Ethiopia's approach to intersectionality in the case of SGBV on WWDs**

The Ethiopian legal and policy framework has dealt with the rights and protections of women and PWD through different legislations and policies. The constitution of Ethiopia does not explicitly recognize the intersectional vulnerability of WWD and does not own provisions which implicitly acknowledge an intersectional approach. On the other hand, despite the lack of explicit mention of intersectionality, the criminal code of Ethiopia has laid out specific provisions that seem to treat violence against WWDs differently. The provisions include

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<sup>219</sup>Proclamation No. 568/2008 of 2008, *Right to Employment of Persons with Disability Proclamation, 14th Year No. 20 (25 March 2008), Art 6 (1) (d).*

<sup>220</sup>Proclamation No.1097/2018 *Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, 25th Year No.8 Addis Ababa (29<sup>th</sup> November 2018).*

special and general circumstances that increase sentence level. However, the criminal code is critiqued for the use of derogatory words that diminish the dignity of WWDs and the aggravating circumstances are also questioned in terms of meaningful impact. The revised family law of Ethiopia also guarantees equality of spouses in marriage, and the setup of some provisions benefits WWDs. Yet, family law also does not explicitly adopt an intersectional approach. The labour and civil servant proclamations have also included commendable protections against SGBV on women but without specific acknowledgement of SGBV against WWD. However, the right to employment of PWDs fills the gap in the two proclamations as it clearly acknowledges the multiple burdens that WWDs face. In general, the lack of uniformity in terms of protections provided for WWD indicates that the Ethiopian legal system does not follow the intersectional approach and mostly depends on a single-axis approach to human rights. Hence, the insufficient recognition of intersectionality in the Ethiopian legal system should be solved based on treaty bodies like Committee on CRPD recommendations.<sup>221</sup>

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1. Conclusion**

The concept of intersectionality is essentially about leaving no women behind as it contemplates the multiple disadvantages women face due to the intersection of their multiple identities. The legal feminist theory is shifting from the formal and dominance theory, which is said to be essentialist, into a non-essentialist theory, which gives focus to women with multiple identities, some of which might make them vulnerable. Globally, there is more emphasis on the issue of intersectional discrimination now, and there are hopes that future human rights instruments come with explicit and clear protection for cases of intersectional vulnerability, such as sexual violence against women. In the case of Ethiopia, it can be illustrated that the relevant legal frameworks do not consider the multiple marginalization of women due to their intersecting identities. Focusing on the specific case of sexual violence on women with disabilities, the paper showed gaps in the constitution and some selected laws. The provisions that protect PWDs tend to neglect the special intersectional situations of women, and on the other hand, the provisions that protect women tend to talk about a uniform category of women. Based on the analysis of the laws, it becomes clear that the Ethiopian legal

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<sup>221</sup> *CRPD Committee (n 155), para10.*

framework on sexual violence generally falls short of protecting WWDs against sexual violence by considering their intersectional vulnerability.

In conclusion, though there are some commendable provisions in protecting WWDs from SGBV, Ethiopia needs to keep up with the evolving human rights framework. Also, Ethiopian feminists, CSOs and national human rights institutions should consider the idea of an intersectional approach in the advocacy of legal reform in Ethiopia. The Ethiopian legal framework also lacks a comprehensive tool to define, protect and punish sexual offences. Had the Ethiopian government adopted a separate body of law to punish sexual offences, it would have been easy to define sexual offences and incorporate several issues, including the proper mainstreaming of WWDs and punishing sexual offences against them with higher penalties, in line with the aggravating circumstances under the Criminal Code. As international law is becoming more progressive on the subject matter, Ethiopia should improve intersectional protection for women with disabilities by taking account of the general recommendations and incorporating them into the specific protections against sexual violence. Since the country is already a party to the principal international instruments giving due attention to the protection of WWDs, focusing on implementing the instruments is also one way of committing to protecting those with intersectional vulnerability.

Ethiopia should employ an intersectional approach in all legislation and in future policies regarding sexual and gender-based violence against WWDs. The entrenchment of the concept itself gives a better view of the country's commitment to human rights. As Makkonen (2002) argues, an intersectional approach and analysis can have an enormous effect on devising such positive measures that will contribute to better protecting the more vulnerable.

#### **5.1.1. Recommendations: towards an intersectional approach in the protection of women with disabilities from SGBV**

- **Based on the findings from chapter four of this paper, the Ethiopian government should undertake the following:**
  - Incorporate explicit recognition of the intersectional vulnerability of WWDs in the constitution and lay down specific protection of PWDs, emphasizing WWDs.
  - Adopt a separate sexual offence act that explicitly deals with SGBV against WWDs, age and disability accommodation and punishment.
  - Adopt a comprehensive law that deals with the rights of PWDs in general and WWDs in particular.

- Integrate the aspect of WWDs in all legislations, policies, and directives.
  - Revise Proclamation No.1097/2018 with an obligation for federal ministers lay out mechanisms to protect WWDs.
  - Revise the Ethiopian criminal code and repeal all derogatory terms used against WWDs.
  - Revise the Ethiopian sentencing guideline to better aggravate the punishment for SGBV perpetrators against WWDs.
  - Adopt and mainstream definition of a reasonable accommodation to be utilized by all laws.
  - Adopt the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa
  - To base the draft proclamation on the rights of PWDs on the explicit acknowledgement of the intersectional approach and the various general recommendations that accord better protection for WWDs.
  - To dedicate a separate provision on the draft proclamation on the rights of PWDs towards protecting WWDs from SGBV.
- **Based on the concerns captured from the above discussions, NHRIs, Feminist Organizations, CSOs, and UN human rights organizations should undertake the following.**
- Feminist organizations like 'Setaweet' focusing on sexual and domestic violence, should devise advocacy that protects women with intersectional vulnerabilities. This way, equality can be real and better development can be achieved.
  - Conduct more research on SGBV against WWDs and craft recommendations.
  - Conduct regular consultations with WWDs and survivors of SGBV to identify further challenges faced the same.
  - Conduct campaigns and advocacy for the possible adoption and revision of laws to fit the circumstance of WWDs.
  - Conduct capacity-building training on a human rights-based approach, intersectional vulnerability, SGBV and Disability.

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