

ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE
CENTER FOR HUMAN RIGHTS

LEGISLATIVE ENFORCEMENT GAPS OF EMPLOYMENT
RIGHTS OF PERSONS WITH DISABILITIES WITH
PARTICULAR EMPHASIS ON REASONABLE
ACCOMMODATION IN ADDIS ABABA

BY

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ADVISOR

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A THESIS SUBMITTED TO ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE IN PARTIAL
FULFILMENT FOR THE REQUIREMENT OF MASTER OF
ARTS IN HUMAN RIGHTS

JUNE, 2013

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Declaration

I, the undersigned, declare that this thesis is my original work, and it has not been presented for a degree in any other university and the source materials used for the thesis are fully acknowledged.

Desalegn Teressa Fita

Signature

Date.....

This thesis has been submitted for the examination with my approval as a university advisor

Asefa Ashengo

Signature _____

Date _____

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ACKNOWLEDGEMENTS

The execution of this study has come true with kin participation and unreserved collaboration of various groups of persons who deserve the greatest appreciation. First and for most, I would like to thank my supervisor, Mr. Asefa Ashengo who has especially cooperated me from the very inception of the research topic to the end of my research work. He has given me constructive comments in conducting my research and accordingly, this research could not become in to being out of his continuous concern to me.

Thanks also go to all my instructors in the Center for Human Rights and other staff in the center, all of whom have contributed in one or another. I am also grateful to Dr. Yitayew Alemayehu who provided me additional strengthening seminar research classes to carry out my research properly and directed me in the right track. The completion of this work and overall my education would not have been possible without the generous assistance and encouragement of my classmate Tamiru Kedir. My special heartfelt thanks go to him and his family members for their continuous encouragement and support they extend for me during the last challenging two years.

Above all I am especially indebted to my parents who gave me support and understanding at all the most difficult times. To Zewde Dabi, my dear wife, I owe that final burst of energy and confidence that enabled me to complete this thesis. To my children Abdi, Hawi, Sena and Amerti who have shown their patience during my study. To my mother Gudetu Emanu and brothers and sisters for encouraging me a lot from the initial time.

I would like to thank my informants those participated in the research work for long hours I spent with them discussing invaluable issues related to problems facing persons with disabilities in work places. It is appropriate for me to thank my classmates with whom I have developed sincere and cordial relations that had made enjoyable my stay in the M.A. program. I would like to thank Mideksa Weya for his encouragement and generous support provided for me.

Finally, my deepest thanks go to Oromia Urban Planning Institute who allowed me to attend this education, and my team members and friends for their persistent encouragement, advice and support, without which my education and the thesis would not have been successful.

LIST OF ACRONYMS

AACG – Addis Ababa City Government

AAU – Addis Ababa University

ADA – Americans with Disability Act

AU – African Union

CRC – Convention on the Right of the Child

CSA – Central Statistical Authority

CWDs – Children with Disability

DDA – Disability Discrimination Act

DET – Disability Equality Training

DFID- Department for International Development (UK Government)

DPOs – Disabled Persons Organizations

DRC – Disability Rights Convention

E.C – Ethiopian Calendar

EC – European Commission

ECDD – Ethiopian Centre for Disability and Development

ENDAN – Ethiopian National Disability Action Network

FDRE – Federal Democratic Republic of Ethiopia

GTP – Growth and Transformation Plan

HOF – House of Federation

HPR – House of Representatives

HRBA - Human Rights Based Approach

IBR - International Bill of Rights

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social, and Cultural Rights

ICF – International Classification of Functioning, Disability and Health

ICIDH – International Classification of Impairments, Disabilities and Handicaps

ICIDH-2 – International Classification of Functioning and Disability

ILO – International Labour Organization

IYDP - International Year of Disabled People

JAWS – Job Access with Speech

MOCS – Ministry of Civil Service

MOLSA – Ministry of Labour and Social Affairs

NGO – Non-governmental Organization

OAU – Organization of African Unity

PWDs – Persons/ People with Disability

UK – United Kingdom

UDHR – Universal Declaration on Human Rights

UPDA - Ugandan Persons with Disabilities Act

UNCRPD – United Nations Convention on the Rights of Persons with Disabilities

UNESCAP – United Nations Economic and Social Council for Asia and the Pacific

USA – United States of America

WHO – World Health Organization

WWDs – Women with Disability

ABSTRACT

Persons with disabilities do not equally and fully participate in the life of their society. They are denied of equal opportunities in the area of employment, education and other activities. Thus, this research is aimed at studying the discrimination made against them in field of employment in general and inappropriate work conditions and denial of reasonable accommodations in work places in particular in Addis Ababa City Government-the Case of Arada Sub-City. This research employed qualitative or interpretivism method and the sampling procedure, which this research followed, is purposive or judgmental.

This research used both secondary and primary data sources for gathering information. Various literature and research studies have been reviewed so as to use them as secondary sources of information. Focus group discussions, informant interviews and in-depth interviews were employed in this research as primary source of information. Three visually impaired three persons with hearing impairment and three persons with physical disabilities employees in different government and non-governmental organizations were interviewed as in-depth respondents. Two focus group discussions were held with male and female discussants separately as their challenges vary based on their gender. And interviews were held with concerned government institutions from the federal and city government as they are responsible for the follow-up of implementation of employment rights of persons with disabilities and with respective disabled persons' organizations for their duties of advocacy and lobby they might conduct.

It has been found through this research that discrimination against persons with disabilities (workers with visual, hearing and physical impairment in this concern) had been identified. They discriminated during vacancy announcement, application and competition for jobs. Some had been discriminated on training and promotion. Necessary accommodations and adjustments (provision of special tools and needs) were not fulfilled and addressed in their workplaces.

The cause for the discrimination and denial of reasonable accommodations is mainly lack of awareness and attitudinal problems on the part of employers and the employees, non-applicability of the existing laws, lack of institutional set-up for the follow-up, monitoring and evaluation of the implementation of the provided law and inefficiency in mainstreaming the disability issues in every activity, low capacity of DPOs hinder them to make advocacies and lobby and absence of researches and accurate data to make effective policies, program and strategies are the major ones. This results in adverse psychological, social and economic effects in the lives of persons with disabilities. Therefore, awareness-raising programs, policy and legislative measures, advocacy and other initiatives by associations of persons with disabilities, institutional set-up for the implementation of laws and appropriate research and data documentation are needed to curb these problems.

CHAPTER ONE

1. INTRODUCTION

1.1 Background

The right of persons with disabilities has become the major concern of various governments, international organizations and other non-governmental institutions in every corner of the world. Like that of any human being, persons with disabilities have the right guaranteed by international, regional and local legal instruments.

Despite the presence of international, regional and national laws and other instruments, persons with disabilities throughout the world continue to be subjected to discrimination and denial of their rights in the field of employment due to weak enforcement of laws, general stereotype on public and private institutions.¹ Throughout the world, people with disabilities are participating and contributing in the world of work at all levels. Besides, it is increasingly apparent that, as ILO notes, disabled people not only have a valuable contribution to make to the national economy, but with their employment also reduces poverty rooted in a society.² However, many PWDs who want to work do not have the opportunity to work due to many barriers. Workers with disabilities are generally concentrated in low-level, low paid jobs, and are not adequately represented at higher levels.³

Misconceptions about the ability of people with disabilities to perform jobs are an important reason both for their continued unemployment and if employed, for their exclusion from opportunities for promotion in their careers.⁴ Such attitudes may stem from prejudice or from the assumption that people with disabilities are less productive than their non-disabled colleagues. Particularly, ignorance or prejudice on persons with disabilities has negative impact that impedes reasonable adjustments and work conditions as well as the overall employment facilities.

¹ Arthur O'Reilly, *the Right to Decent Work of Persons with Disabilities*, Geneva, 2007.

² International Labor Organization, *Legislation, Policies and Programs Concerning the Employment of People with Disabilities in Selected Countries of East Africa: Background Paper*. Geneva: International Labor Office, 2002, p. v-vi.

³ *Ibid.*

⁴ Contreras DG, et al... *Socio-economic impact of disability in Latin America: Chile and Uruguay*, Santiago, Universidad de Chile, Departamento de Economía, 2006.

Misconceptions are often prevalent not only among non-disabled employers but also among family members and disabled people themselves. Due to the above mentioned facts and other reasons, some people with disabilities inculcate low self-expectations about their ability to be employed and may not even try to find employment. The social isolation of people with disabilities restricts their access to social networks, especially of friends and family members that could help in finding employment.⁵

However, even if the above mentioned social attitudes are often raised as hindering factors of persons with disabilities, governments try to bridge the gap by legislating laws which guarantee equal participation including reasonable accommodation.⁶ The effect of implementing the legislation would have very great positive results. It minimizes the social bias and marginalization and as well enhance the productive and self-esteem of disabled persons.⁷

Even if there are various factor that have a contribution to the non-realization of employment opportunity of persons with disabilities (PWDs), enforcement frailty of laws legislated in favour of these part of societies are the major ones. In that manner, because of weak enforcement capacity, political will and commitment of government officials or other stakeholders, in Ethiopia, the legislations which are believed to solve problems related to reasonable accommodations of persons with disabilities remain inapplicable in Ethiopia generally and in Addis Ababa specifically.

Addis Ababa which the research focuses upon is with intricate problems in enforcing employment rights of persons with disability in adjusting appropriate accommodation facilities in many civil service institutions, private organizations, non-government organizations and disabled persons organizations themselves. Even if there are laws that guarantee equal employment opportunities of persons with disabilities, the willingness and capacity to enforcement these laws are at its infancy which requires further efforts to fully realize the rights of PWDS in the city government.

With this fact in mind, the study focuses on examining the enforcement of employment rights of persons with disabilities in relation to reasonable accommodations in workplaces in Addis

⁵ Ibid.

⁶ Anna Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment*, Portland, Oregon, USA, Published in North America, Hart Publishing, 2008.

⁷ Wei Liu, *Impact of Living or Working Environments on Persons with Disabilities*, UNESCAP Working Paper, Bangkok, Thailand, July 2007.

Ababa. Contextually speaking the phrase reasonable accommodation is defined in FDRE Proclamation No. 568/2008 as follows: “An adjustment or accommodation with respect to equipment at the work place, requirement of the job, working hours, structure of the business and working environment with a view to accommodate persons with disabilities to employment.”⁸ While examining the existing legal framework and practices, this research attempted to identify the practical gaps in enforcement mechanisms that affect the right to reasonable accommodation of persons with disabilities at work places. In due course of time, the enforcement levels of the provisions of the FDRE Proclamation No. 568/2008 which provides the Right to Employment of Persons with Disabilities has been assessed practically at the ground whether it has given a wider space to reasonable accommodation at workplaces or not. In this regard the research targeted workers with disabilities (persons with visual impairment, hearing impairment and physical impairment) in Addis Ababa City Government with particular emphasis on the case of Arada sub-city.

1.2. Statement of the Problem

Throughout history, individuals with disabilities have struggled to live full and productive lives as independently as possible in a society where attitudinal, environmental, stigma, and discrimination barriers are prevalent. For a variety of reasons, according to Neufeldt and Albright “disabled people have found it inordinately difficult to participate in the economic benefits of their countries to the same extent as those with no disabilities. This has been true in both low and high-income countries, though citizens of low-income countries often face the greater disadvantage.”⁹ If one’s disability relates only to one faculty such as, sight, hearing, use of arms or legs, “there is a tendency for others to believe that they cannot do anything at all, or at least as well as those who are not disadvantaged in the same way.”¹⁰ In most societies since ancient time, they are regarded as only less productive who do not contribute to the well-being and development of their society.

⁸ FDRE, Federal Negarit Gazeta, Proclamation No. 568/2008 the Right to Employment of Persons with Disability. 14th Year No. 20 Addis Ababa, 25th March, 2008.

⁹ Aldred Neufeldt and Alison Albright, Disability and Self-Directed Employment: Business Development Models. Captus Press Inc. 1998, p. 29.

¹⁰ Id. P. 12.

As it is conventionally known, the rights of persons with disability have not been explicitly recognized in binding instruments of international human rights adopted by the United Nations for many decades. However, the United Nations adopted Convention on the Rights of Persons with Disabilities (CRPD) recently understanding the existence of the social factors such as “ignorance, neglect, superstition and fear ... that have isolated persons with disabilities and delayed their development.”¹¹ Thus, it is the sole convention explicitly dealing with the rights and interests of PWDs than the previously adopted core international human rights instruments. This convention recognizes the rights of employment imposing an obligation upon states to realize the rights to reasonable accommodation of PWDs. There are many types of things that may help people with disabilities with regard to reasonable accommodation to work successfully, such as installing a ramp or modifying a workspace or restroom; sign language interpreters for people who are deaf or readers for people who are blind; providing a quieter workspace or making other changes to reduce noisy distractions; training and other written materials in an accessible format, such as in Braille, on audio tape, or on computer disk; amplified telephones by people who are deaf, and hardware and software that make computers accessible to people with vision impairments or who have difficulty using their hands; and time off for someone who needs treatment for a disability.¹²

Contrary to this, for the majority of PWDs, either there is no possibility of finding a job or the job, which they often obtain is poorly paid, low-skilled, low-status jobs, which are both unrewarding and undemanding type of work, which has been termed as “under-employment.”¹³

Because of such simple reasons like: lack of access to building or transportation, or the inability to communicate orally for the hearing and speech impaired and in writing for the visually impaired, PWDs are often excluded from employment opportunities. As stated in the preceding statement, the major reason for the denial of equal opportunities in employment accommodation is the existing discrimination against PWDs. This is also a deep-rooted problem in Ethiopia,

¹¹Standard Rules on the Equalization of Opportunities for Persons with Disabilities, A/RES/48/96, 85th Plenary Meeting 20 December 1993.

¹²Anne-Marie Mooney Cotter, *This Ability: An International Legal Analysis of Disability Discrimination*, Ashgate Publishing Limited, 2007, p. 9.

¹³Supra note at 9.

where PWDs are denied equal opportunities in employment accommodations attaching to mainly resource limitation, overall poverty, ignorance and attitudinal problems. Having this fact in mind, this study identified the following problems in relation to employment rights and provision of reasonable accommodation of persons with disabilities in the Addis Ababa City government.

- The absence of accessible facilities for the individuals employee with disabilities at work place; and the absence of job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for employee with disabilities;
- The presence of explicit and implicit discrimination in every step of employment for instance, in posting the vacancy, recruitment, examination, grading the tests or examinations, promotion, transfer, fulfilling equipment, etc.
- Negative attitudes towards the needs and ability of PWDs to successfully manage the assigned tasks;
- Lack of mainstreaming and awareness programs to provide assistance, advice and training on issues of equality through developing appropriate internal mechanisms to change the negative social attitudes, prejudice, stereotypes towards PWDs at work place;
- The absence of committed institution to ensure equal opportunities and equitable representation that wholly devoted to disability at government level;
- The existing Developmental Social Welfare Policy of Ethiopia is not consistent with the language of Human Rights Based Approach (HRBA) as provided on the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
- Lack of anti-discrimination laws, regulations and directives in civil service institutions that exclusively protects and promotes the rights of PWDs at work place; and
- Poor implementation mechanisms of proclamation No. 568/2008 the Employment Rights of Persons with Disabilities;

- Lack of resource to equally provide accommodations, adjustments, modifications and adaptations at work places due to absence of financial and technological constraints.
- Lose follow-up and monitoring mechanisms on the parts of legislative organ on the enforceability of the legislations regarding disability.

1.3 Research Questions

1. Do persons with disabilities face discrimination because of their disability when applying for a job, during promotion, transfer, training and development and are they accommodated properly at workplaces?
2. What are the legal enforcement gaps in the City of Addis Ababa with respect to the employment rights of persons with disabilities?
3. What possible sources could be mentioned for the discrimination made against persons with disabilities in employment and lack of provision of reasonable accommodation at work places?
4. What specific measures can be taken to reduce/eliminate the discrimination made against persons with disabilities in employment and in the process of provision of reasonable accommodation?

1.3 Objective of the Research

1.3.1 General Objective

The general objective of this research is to study the employment conditions mainly provision of reasonable accommodation of persons with disabilities at work places in Addis Ababa City Administration.

1.3.2 Specific Objectives

The specific objectives of this study include:

- i. Assessing the problems encountered by and discrimination made against persons with disabilities when applying for a job and advancement and development in employment and assessing the accommodation of them in the work place;

- ii. Exploring the possible sources of the discrimination and denial of reasonable accommodation made against persons with disabilities in employment and at work places;
- iii. Understanding the psychological, social and economic effects of discrimination and denial of reasonable accommodation made against persons with disabilities; and,
- iv. Recommending possible legal and practical interventions that can be undertaken to reduce/eliminate the problem based on the findings.

1.4. Significance of the Study

The findings of this research will provide a knowledge base for governmental and non-governmental organizations in adopting and reforming appropriate policies, laws and programs for provision of appropriate reasonable accommodation for persons with disabilities. It also serves as a reference for further research in the sector of employment for people with disabilities.

1.5. Scope of the Research

The research will focus on implementation gap of employment rights of persons with disabilities in Addis Ababa City Administration with particular emphasis on reasonable accommodations or adjustment at work places as a case of Arada sub-city. The research focus on workers with visual, hearing and physical impairment that employed either in public and non-governmental organizations that require reasonable accommodations or adjustments for qualified person with disabilities.

1.6. Limitation and Delimitation of the Study

1.6.1 Limitations of This Study

Resources and time were the very limitations of this study when being carried out. Because of this, it has been shortage of time for this research to include the opinions of employers from government and non-government sectors. This made the research to consist of only the view of persons with visual, physical or aural disabilities and hence, it included data gathered from only one side. In addition, this research could not find equal number of the visually, auditory and the physically impaired. Here, it is also important to mention the fact that some individuals, leaders

of associations of persons with disabilities and government organizations that are responsible for formulation of policies, regulations and directives and the power vested on them to follow the implementation of these laws were not willing to be interviewed, which limits the study.

The other limitation of this study can be mentioned is associated with the methodology employed by the research. Firstly, this study cannot be generalized for the whole population of PWDs. Secondly, there is no way to detect what all the respondents said is true.

The scarcity of data on the issue of disability in general and employment opportunity and work conditions (provision of necessary facilities to equalize the working opportunities) of PWDs in particular is also the other limitation that can be cited. This scarcity of information on the matter of disability has also been proved by various researches like that of Tirusew and says data pertaining to disability in Ethiopia, is fragmentary, incomplete and sometimes misleading.¹⁴ While conducting the research, the researcher faced financial limitations since there was a need of employing data collectors and needed to reimburse more amounts for transportation and other expenses since the researcher himself is a person with a physical disability.

1.6.2 Delimitation of the Study

This study is delimited to the visually and auditory impaired and the physically disabled among the disability groups. Furthermore, among the physically disabled, it only focuses on those who have problems related to mobility. It is delimited to those persons who are only employed in various government agencies and non-government organizations (not for profit organizations) and does not include those who are hired in private profit making organizations or those who are self-employed and who work in sheltered workshops, which have been established to serve mainly the disabled. It is also delimited to the area of Addis Ababa especially to only one sub-city of the town.

1.7. Ethical Considerations

Prior to the commencement of this study, the research topic with its concept description was submitted to the Center for Human Rights for approval. Subsequently after the topic approval the

¹⁴ Tirusew Tefera, Human Disabilities Developmental, Educational and Psychosocial Implications. Addis Ababa: Department of Educational Psychology, Addis Ababa University, 2000, p. 2.

research proposal also submitted to the center and the proposal defense carried out consequently and sought for support letter from the center to proceed the study. Participants in the research were given information sheets to read beforehand and consent forms to sign, should they agree to participate in the study. They were also assured of their right to withdraw from the study at any time without being required to give reasons, and without any consequences. Anonymity and confidentiality were ensured in order to protect the identity of the key informants. Participants of the focus group discussions were assured also of confidentiality and told that information gained from this study would be used only for research purposes.

1.8. Operational Definitions of Concepts/Terms

The following conceptual definitions are given regarding the major concepts and terms that are employed in this study and it is in the light of these explanations that the paper tries to analyze them.

Disability: Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.¹⁵

Handicap: A disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfillment of a role that is normal, depending on age, sex, social and cultural factors, for that individual.¹⁶

Impairment: Any loss or abnormality of psychological or anatomical structure or function.¹⁷

Persons with Disabilities: Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹⁸

¹⁵World Health Organization (WHO), International classification of impairments, disabilities and handicaps, Geneva: 1980, pp.27-29; also quoted in the World Program of Action concerning Disabled Persons, available at <http://www.un.org/esa/socdev/enable/diswpa01.htm#Definition>

¹⁶ Ibid

¹⁷ Ibid.

¹⁸ Peter Coleridge and et.al, European Commission, Study of Disability in E.C Development Cooperation, November, 2010.

Major Life Activity: Basic functions that the average person in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.¹⁹

Employment: A relationship that exists between any person with disability and an employer, which includes recruitment, promotion, training, transfer and other conditions of work.²⁰

Employer: Any federal or regional government office or an undertaking governed by the Labour Proclamation.²¹

Discrimination: to accord different treatment in employment opportunity as a result of disability, provided, however, that any inherent requirement of the job or measures of affirmative actions may not be considered as discrimination.²²

Accommodation: The adjustment of a rule, practice, condition or requirement to take into account the specific needs of an individual with disabilities, with the aim of enabling this person to participate fully and equally. In the workplace, accommodation can include acquiring or adapting software and keyboards for an employee with a visual impairment, training or allocating extra time to complete a task. In education, reasonable accommodation might require the provision of alternative ways to fill course requirements, tutorial assistance or assistive technology.²³

Reasonable Accommodation: Necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.²⁴

¹⁹ Ibid.

²⁰ Supra note at 8.

²¹ Ibid.

²² Ibid.

²³ Supra note at 18.

²⁴ UN, United Nations Convention on the Rights of Persons with Disabilities, Article 2 definitions, 2006.
<http://www.un.org/disabilities/default.asp?navid=12&pid=150>

Undue Burden: An action that entails considerable difficulty or expense on the employer in accommodating persons with disabilities when considered in light of the nature and cost of the adjustments, the size and structure of the business, the cost of its operations and the number and composition of its employees.²⁵

Communication: Includes languages, display of text, braille-tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human reader and augmentative and alternative modes, means and formats of communication, including accessible information technology.²⁶

Language: includes spoken and signed languages and other forms of non-spoken languages.²⁷

Discrimination on the basis of disability: Any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.²⁸

Key Informants: Persons who are either involved with a certain issue as a regular part of their job or as part of their volunteer activities or, because they are knowledgeable about that community, its citizens, and its history.²⁹

Focus Group Discussion: A form of qualitative research method in which a group of people are asked about their perceptions, opinions, beliefs and attitudes towards a product, service, concept, advertisement, idea, or packaging.³⁰

²⁵ Supra note at 8.

²⁶ Supra note at 25.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Dagnachew Bogale Wakenè, *The Role of Disability Rights Movements in the Ethiopian Development Agenda*, university of Stellenbosch, Faculty of Health Sciences, Centre for Rehabilitation Studies (CRS), Dec. 2010, p. xi.

³⁰ Ibid.

Mainstream: The prevailing current attitudes, values, and practices of a society or group.³¹

Inclusion: Engaging the uniqueness of the talents, beliefs, backgrounds, capabilities, and ways of living of individuals and groups when joined in a common endeavor.³²

Right: A justified, recognized, and protected (violation of which is unlawful) claim on, or interest in a specific tangible or intangible matter.³³

A qualified person with a disability: an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position without endangering themselves or others.³⁴

Environmental Discrimination: any physical barrier, inaccessible public transport, inaccessible streets design and inappropriately designed and inaccessible building.³⁵

1.9. Organization of the Research

The research comprises six chapters, each discussing relevant themes in relation to legislation enforcement gaps of employment rights of persons with disabilities particularly focusing on reasonable accommodations in Addis Ababa City government. Accordingly, the first chapter consists of the introductory parts of the research which deals with the background information to the study, the statement of the problem and research questions, objective of the study (general objective and specific objectives, significance of the research, scope of the research, limitation and delimitation of the study, ethical considerations, operational definitions of concepts/terms and organization of the research.

The second chapter deals with literature review that discusses definitions, concepts and prevalence of disability, discrimination of PWDs at workplace and reasonable accommodations/adjustment at workplaces.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Supra note at 6.

³⁵ Supra note at 7.

The third chapter deals with methodology of the study which comprises description of the study area and research settings, research methods, sampling techniques and sample size, data collection methods and data analysis.

The fourth chapter deals with findings of the study that encompasses background information of the respondents, the way persons with disabilities get information about vacancy announcement, problems encountered by persons with disabilities during competing for jobs, reasonable accommodation and opportunity of PWDs to training and promotion in employment, measures taken by the persons with disabilities when facing discrimination in employment and during refutation of reasonable accommodation, sources of discrimination and refutation of reasonable accommodation on workers with disabilities in employment and effects of discrimination in employment and deprivation of reasonable accommodation at work place on persons with disabilities.

The fifth chapter deals with discussion of the findings that include discrimination against PWDs during recruitment for employment and promotion, provision of reasonable accommodation and effects of discrimination and denial of reasonable accommodation on the socio-economic life of PWDs.

The final chapter then deals with conclusions and recommendations. All the chapters are divided into different subtopics, followed by reviews and discussions. The paper also includes abstract of the thesis, list of acronyms, acknowledgements and bibliographies.

CHAPTER TWO

2. LITERATURE REVIEW

2.1 Definitions, Concepts and Prevalence of Disability

2.1.1 Disability Definitions from Different Perspectives

Throughout decades of medical and social research and evolving international human rights and anti-discrimination law, there have been several attempts to reach a universal definition of what disability is by entities and institutions of different nature: governments, international organizations, healthcare and medical authorities and disabled people's organisations (DPOs).³⁶ What has emerged in the light of the on-going discussion is that, first of all, the terminology used in the disability discourse changes over time and has different meanings from one language and culture to another.³⁷ Secondly, in the past few decades, persons with disabilities and their representative organisations have acquired a more prominent role in the international discussion about disability and human rights issues, gathering increasing consensus on the need for a more comprehensive conceptualisation of disability in international legal, policy and development frameworks.³⁸ In analysing the history and evolution of the disability discourse and attempting to establish a theoretical framework for discussion, the disability movement has identified certain patterns across different interpretations of the disability concept and categorised them into separate 'models'.³⁹

In this section of the thesis, it is tried to compare and discuss the characteristics of such models and the major influence that this framework has had on international legal and policy instruments as well as on rethinking the language and terminology associated with disabilities.

³⁶ Ethiopian Centre for Disability and Development (ECDD), *Mainstreaming Disability Equality in Development*, Adopted from the Disability Equality Training (DET) Manual (ILO International Training Centre: Francesca Biasiato, with the assistance of Barbara Murray, Debra Perry, Simonetta Cavazza), p.1

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

Definition of PWDs under the United Nations Instruments

Up till the adoption of the Convention on the Rights of Persons with Disabilities (UNCRPD) in 2006, the United Nations were widely criticised for not explicitly addressing the issue of disability equality within core human rights instruments.⁴⁰ A definition of disability did not appear in any of the UN official documents up till the launch of the International Year of Disabled Persons in 1981 and the UN World Programme of Action concerning Disabled Persons in 1982.⁴¹

Just over ten years after the adoption of the WPA, at the closing of the UN Decade of Disabled Persons in 1993, the General Assembly adopted the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.⁴² This document maintains the disability/handicap dichotomy, even though it defines disability as summarising “a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature”.⁴³

Finally, the UN Convention on the Rights of Persons with Disabilities contains a rather different view of disability, summarising and reflecting the outcomes of decades of discussion and research on the issue:

*“Disability is an evolving concept and [...] results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”.*⁴⁴

In Article 1, the Convention also provides a description of the term ‘persons with disabilities’ as including “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”.⁴⁵

⁴⁰ Supra note at 36.

⁴¹ Ibid.

⁴² Ibid.

⁴³ UN, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993, available at <http://www.un.org/esa/socdev/enable/dissre01.htm>

⁴⁴ Supra note at 24.

⁴⁵ Ibid.

World Health Organization (WHO) Definition

In 1980 the World Health Organisation (WHO) launched the International Classification of Impairments, Disabilities and Handicaps (ICIDH), aimed at providing a standard language and a framework for the description of conditions leading to disabilities, for the purpose of diagnosis and rehabilitation.⁴⁶ This framework is based on the conceptual separation – and at the same time on the interrelation – between the terms ‘impairment’, ‘disability’ and ‘handicap’.⁴⁷ The terms defined as follows:

- “Impairment: any loss or abnormality of psychological, physiological, or anatomical structure or function;
- Disability: any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being;
- Handicap: A disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors, for that individual.”⁴⁸

According to ICIDH, such concepts are linked by a causal relationship so that an impairment (caused by a disease or disorder) may lead to a disability, which in turn may result in a handicap. It was the first approach to recognize the significance of personal, social and environmental factors in the conceptualization of disability.⁴⁹ However, the ICIDH terminology gave rise to some confusion, since it was claimed that in many languages and social contexts the terms disability and handicap were used interchangeably.⁵⁰

In ICIDH (ICF), the terminology and definitions of impairment, disability and handicap are abandoned in favour of a distinction between different levels of functioning. The classifications specify that the term “disability serves as an umbrella term for impairments, activity limitations and participation restrictions”.⁵¹

⁴⁶ Supra note at 36.

⁴⁷ Ibid.

⁴⁸ Supra note at 15.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Supra note at 36, p. 8.

This shift in terminology, which becomes more evident in the ICF, has major implications for the applicability of the framework, in that a classification based on levels of functioning rather than on disability can be applied to all people regardless of their health status.⁵² The ICF proposes a new classification in which health and disability are part of the same spectrum. It “acknowledges that every human being can experience a decrement in health and thereby experience some disability. This is not something that happens to only a minority of humanity.”⁵³

Definition of persons with disabilities (PWDs) by International Labour Organization (ILO)

The ILO has provided an operational definition of the term disabled person, regarded as being more relevant for the purpose of International Labour Standards, as well as ensuring greater compatibility the national legal and policy frameworks of Member States.

The ILO definition has been modified somewhat since its first appearance, reflecting the evolution of the international discussion over discrimination in employment in general and the question of disability in particular. A definition which appears in the Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159 of 1983 (and in the accompanying Recommendation No. 168) was included in the ILO Code of Practice on Managing Disabilities in the Workplace, published and adopted in 2001, and reciting:

*“An individual whose prospects of securing, returning to, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical, sensory, intellectual or mental impairment.”*⁵⁴

It appears clear how such definition brings about several new elements, such as the issues of career advancement and return to work after facing a disability, and the question of recognition and classification of different types of disability.

⁵² Ibid, p. 9

⁵³ Ibid.

⁵⁴ ILO, ILO Code of Practice on Managing Disability in the Workplace, (paragraph 1.4 definitions) <http://www.ilo.org/public/english/standards/relm/gb/docs/gb282/pdf/tmemdw-2.pdf>

Continental, Regional and National Definitions

As far as the continental level is concerned, definitions vary greatly from country to country and according to the context in which they are used – whether for the purpose of labour legislation, health sector, social policies or documents specifically addressing the question of disability. It is important to point out that there is no single definition of disability that can be used in all labour and social legislation, as that will very much depend on the goal being pursued by each particular law or policy.⁵⁵ In the following it is presented a selection of different definitions of ‘disability’ or of ‘person with disabilities’ from four different regions of the world. It is aimed to show the trends and relevant experiences what constitutes disability in their definition.

Africa (Ethiopia)

In “Nagarit Gazeta” of the Transitional Government of Ethiopia, Proclamation No. 101 of 1994 “Employment Rights of the Disabled” defined “a disabled person” as a person who is unable to see, hear or speak or is suffering from mental retardation or from injuries that limit him or her due to natural or manmade causes. However, that term does not include persons who are alcoholic, drug addicts and those with psychological problems due to socially deviant behaviors.⁵⁶

In Ethiopia we can find a definition of disability given under the legislation dealing with PWDs. Specifically the legislator focuses on issues related to the Employment Rights of Persons with Disabilities under Proclamation No. 568/2008. Thus, the proclamation defines as follow:

Person with Disability means an individual whose equal employment opportunity is reduced as a result of his physical, mental or sensory impairments in relation with social, economic and cultural discrimination.⁵⁷ This definition encompasses the discrimination and its consequence in employment opportunities of PWDs.

⁵⁵ Ibid.

⁵⁶ “Nagarit Gazeta” of the Transitional Government of Ethiopia, Proclamation No. 101 of 1994.

⁵⁷ Supra note at 8.

The Americas (United States of America)

“The term "disability" means, with respect to an individual

- 1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- 2) a record of such an impairment; or
- 3) being regarded as having such impairment.”⁵⁸

Asia and the Pacific (Cambodia)

“A person with disability is any citizen who lacks any physical organ or capacity or suffers any mental impairment, which causes decent restriction on his/her daily life or activities such as loss of limbs, quadriplegia, visual or hearing impairment or mental handicap etc., and obtains a certified document issued by Ministry of Health.”⁵⁹

Europe (United Kingdom)

The 1995 Disability Discrimination Act contains the following definition:

“...a person has a disability [...] if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.”⁶⁰ In 2005, the definition was included: “A person who has cancer, HIV infection or multiple sclerosis is to be deemed to have a disability, and hence to be a disabled person”⁶¹

Generally, the provided definitions were based on the disability models which will be discussed in this chapter later. Some definitions derived from medical or charitable model and the others may be derived from social or the rights-based approaches. Most international development agencies adopted the rights-based approach which asserts each person has equal economic,

⁵⁸ Americans with Disability Act of 1990 as amended in 2008, Sec. 12102, par (2), full text available at <http://www.ada.gov/pubs/ada.htm#Anchor-Sec-11481>

⁵⁹ Draft Law on Rights of People with Disabilities, submitted in occasion of the Regional Workshop towards a Mid-term review of the Biwako Framework for Action, 2005, available at <http://www.worldenable.net/bmf2005/lawcambodia.htm>

⁶⁰ United Kingdom Disability Discrimination Act (DDA) 1995, Part I (1), available at http://www.opsi.gov.uk/acts/acts1995/ukpga_19950050_en_2#pt1-11g1

⁶¹ United Kingdom Disability Discrimination Act (DDA) 2005, sec. 18 (1)(3), available at http://www.opsi.gov.uk/acts/acts2005/ukpga_20050013_en_5#pb3-11g18

cultural and social rights. The rights-based approach is being about ‘leveling the playing field so that people with disabilities can access jobs, education, health and other services. This approach is about the removal of physical and social barriers; it is about attitude adjustments for policy makers, employers, teachers, healthcare professionals and even family members. It is about ensuring universal design, accessible technology, and coordinated public program and service. The approach requires government to provide the resources necessary to implement these goals and to enforce penalties for those who refuse to cooperate’.⁶²

2.1.2 Prevalence of Disability

2.1.2.1 Global Prevalence

Over 600 million people in 2004 and over one billion people in 2011 worldwide have a physical, sensory, intellectual or mental impairment of one form or another.⁶³ This equals approximately 15-20 per cent of the world’s population.⁶⁴ People with disabilities can be found in every country, with over two thirds of them living in the developing world.⁶⁵

According to the World Health Organization estimates, 15-20 percent of a developing country’s population has some type of disability, and 80 per cent of the world’s persons with disabilities live in the developing world. Among them, 20 per cent is estimated to live in urban areas. “The number of PWDs is increasing due to population growth, aging, emergence of chronic diseases and medical advances that preserve and prolong life.”⁶⁶

Throughout the world there is an undeniable link between disability, poverty and exclusion. The denial of equal employment opportunities to people with disabilities forms one of the root causes of the poverty and exclusion of many members of this group.⁶⁷ There is ample evidence that people with disabilities are more likely than non-disabled persons to experience disadvantage,

⁶² Rebecca Yeo, *Disability, Poverty and the New Development Agenda*, Disability Knowledge and Research (KaR), 2005, pp. 7-8.

⁶³ World Health Organization and World Bank, *World Report on Disability*, 2011, Malta. available on the WHO web site <http://www.who.int>

⁶⁴ *Ibid.*

⁶⁵ *Supra* note at 42.

⁶⁶ ILO, *Achieving Equal Employment Opportunities for People with Disabilities through Legislation Guidelines*, Development Cooperation, Ireland, 2004, pp. 1-2.

⁶⁷ *Supra* note at 62.

exclusion and discrimination in the labour market and elsewhere. As a result of these experiences, people with disabilities are disproportionately affected by unemployment.⁶⁸ When they work, they can often be found outside the formal labour market, performing uninspiring low-paid and low-skilled jobs, offering little or no opportunities for job promotion or other forms of career progression. Employees with disabilities are often under-employed.⁶⁹

The most appropriate laws to advance equal opportunities for people with disabilities in the labour market, and policy measures to implement these laws vary from one State to another. Each State has a margin of discretion in assessing which laws and policy measures are most suitable to meet its specific circumstances and the needs of people with disabilities.⁷⁰ International human rights law, ILO international labour standards and national labour law in many countries impose a duty on each State to take whatever steps are necessary, to the maximum of its resources, to ensure that each person with a disability enjoys the right to equal opportunities in the labour market.⁷¹

In this concern the Department for International Development of UK (DFID) states about the relationship between poverty and disability that, “Disability is both a cause and consequence of poverty”. It goes further and asserts that, “Eliminating world poverty is unlikely to be achieved unless the rights and needs of people with disabilities are taken into account ... Poor people with disabilities are caught in a vicious cycle of poverty and disability, each being both a cause and a consequence of the other.”⁷² The Asian Development Bank’s Technical Assistance further clarified relationship overwhelmed between poverty and disability as “By all definitions of poverty, disabled people in developing countries are over-represented among the poor ... Social exclusion and isolation is a frequent part of their daily experience... Often, the disabled are deprived of the opportunity to participate in productive work and thus become impoverished more easily than the rest of the population. Poverty also causes new disabilities as a result of poor and dangerous living and work conditions; malnutrition; and lack of adequate health care, education and vocational training opportunities. Therefore poverty is both a cause and a consequence of disability. Poverty and disability reinforce each other, contributing to increased

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

vulnerability and exclusion. Eliminating poverty is unlikely to be achieved unless the rights and needs of excluded people and disabled people are taken into account.”⁷³

2.1.2.2 National Prevalence

As the United Nations Expert group noted, an increase in the number of PWDs can be visible in Ethiopia due to poverty, ignorance, war, famine and drought coupled with unavailability of adequate preventive and rehabilitative services.⁷⁴ The issue of international comparability of disability statistics or data is controversial not only in Ethiopia but also across the world. From domestic data sources three documents are considered, namely the 1994 and the 2007 Population and Housing Census Reports of the Central Statistical Agency (CSA) and the Baseline Survey on Disability in Ethiopia conducted in 1995 by Institute of Educational Research, Addis Ababa University.⁷⁵ Indeed, Population and Housing Census Reports, and for that matter other statistical reports produced by the CSA, are official sources on statistical information in the country. Though not as recent as the 2007 Census Report, AAU’s Survey Report as cited by ENDAN, is also briefly viewed not only because it is regarded as one of the first “major study” in the country on disability information, but also for the same reason as the 1994 Census Report.⁷⁶ The Section begins by providing information on the prevalence of disability in the country based on WHO estimates.⁷⁷

Given Ethiopia’s current total population figure which is 73,750,932 the number of PWDs that live in the country based on WHO’s 15-20 per cent estimate is more than 11.06-17.8 million. Of the mentioned PWDs in the country, about 80.2 percent of them live in rural areas and the remaining about 19.8 percent live in urban centers.⁷⁸ If WHO’s estimate is similarly adopted for determining prevalence of disability in Addis Ababa, the number of PWDs living in the city is about 410,933- 547,910, i.e. 15-20 per cent of the city’s estimated 2,739,551 population.

⁷³ Ibid.

⁷⁴ Ethiopian National Disability Action Network (ENDAN), a Study on Opportunities and Services for Persons with Disabilities in Addis Ababa, 2010, P. 5.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

According to WHO's estimates, the number of persons who have some form of disability in the country is significant.⁷⁹

Suffice to say about WHO estimates, now the three domestic data sources will be examined in chronological order. The first of the three reports to be examined is the 1994 Census Report. According to this Report of the country's 53 million total population 988,885, or 1.85% of the total population, were PWDs. Distribution of disability in rural and urban areas was 83% and 17%. The report further reveals that in Addis Ababa there were 45,936 PWDs which is 2.18% of the urban centers 2,100,031 total population.⁸⁰

Domestic data source that came after the 1994 Census report was the 1995 Survey Report. Though produced within similar timeframe as the 1994 Census Report, the Survey report provides different disability prevalence figure than the Census Report. According to the Survey Report, the country's disability prevalence figure is 2.95%.⁸¹

The third domestic data source to be discussed is the 2007 Census Report. Compared to the previous domestic data sources reviewed, the 2007 Census Report is produced recently, and as such contains most recent information available on disability prevalence in the country.⁸² According to the Report, the number of PWDs in the country is 805,492 which is 1.09% of the country's 73,750,932 total population. Same report further reveals that women account for about 47% of PWDs whereas men account for about 53%.⁸³

In addition to information at country level, the 2007 Census Report also provides information at Addis Ababa level. Of the city's 2,739,551 total population the Report shows that 32,630 (1.19%) are PWDs. Women account for about 45% of the city's PWDs population while males account for the remaining about 55%.⁸⁴

There could be many reasons traced to explain for such a huge discrepancy between the WHO estimate and the national figures in general, but the following four are considered the main

⁷⁹ Ibid.

⁸⁰ Central Statistical Office of Ethiopia (CSA), Population and Housing Census, (CSA 1994 Report).

⁸¹ Supra note at 36, p. 6.

⁸² Central Statistical Office of Ethiopia, Population and Housing Census, (CSA 2007 Report).

⁸³ Ibid.

⁸⁴ Ibid.

reasons in Ethiopia's context.⁸⁵ One is negative attitude towards disability and PWDs prevalent in some cultures, which induces parents to be reluctant to disclose family member with disability when contacted for census or surveys. The second reason is absence of an established system for detecting persons with invisible or less visible disabilities coupled with parents and communities with low level awareness on these types of disabilities. The low technical competency of survey or census workers is the third reason given. The fourth and major reason forwarded relates to the relative nature of the concept "disability" and the implications it has in disability collection. Indeed, it is difficult to imagine internationally comparable disability data in the absence of a common operational definition of disability that guides countries like Ethiopia in measuring and collection of disability information.⁸⁶

2.1.3 Evolution of Disability Models

The invisibility and isolation of persons with disabilities are the result of stigma, discrimination, myths, misconceptions, and ignorance.⁸⁷ An understanding of this experience is vital if we are to shape effective plans for the inclusion of disability in development, despite the advent of the Convention on the Rights of Persons with Disabilities (CRPD), which accords persons with disabilities full rights as citizens, attitudes based on other models of disability persist.⁸⁸ Four approaches can be identified: the charity model, the medical model, the social model, and the human rights model.

2.1.3.1 The Charity Model

The charitable approach turns persons with disabilities into objects who only receive and do not participate in the processes which shape their lives. It sees them as individuals, with individual problems. According to the charitable approach, if you solve the problems of individuals with disabilities, then the 'problem' of disability is solved. But according to this approach, if disability

⁸⁵ Supra note at 74.

⁸⁶ Ibid.

⁸⁷ Peter Coleridge and et.al, European Commission, Study of Disability in E.C Development Cooperation, November, 2010, p. 28.

⁸⁸ Ibid.

is seen as an individual problem, services will always be inadequate, because individual needs can never fully be met.⁸⁹

Nevertheless, the charity model cannot be dismissed as wholly negative. Compassion and the charitable impulse are positive features of human behavior, and can be channeled into deeper understanding and more constructive engagement with the issue of disability. Many NGOs dealing with disability that were formed to provide individual rehabilitation on the charitable and medical models have increasingly embraced a comprehensive rights-based approach.⁹⁰

2.1.3.2 The Medical Model

The medical model perceives people with impairments as ‘sick’ and therefore in need of a ‘cure’, or rehabilitation. Rehabilitation is seen as a process of making people with impairments ‘fit’ enough to be integrated or reintegrated in society. What happens after the rehabilitation process is not seen as the responsibility of the medical professionals. Empowerment is valued only in terms of the extent to which the disabled individual can perform activities of daily living related to functional independence. Little responsibility is placed on the role of the environment, including the attitudes of society toward a person with impairment.⁹¹

However, it is important not to downgrade the importance of medical intervention, which has tended to happen through an uncritical embrace of the social model. The medical aspects of disability must be addressed as part of a human rights approach to barrier removal. Eye diseases, polio, clubfoot, cleft palate, burn scar contractures, obstetric fistula, and epilepsy are all examples of seriously disabling impairments which can be prevented, cured or greatly alleviated by medical intervention. Prevention, cure and alleviation are still vital concepts in disability, within the wider view of a human rights approach. Advocacy has to be matched by service provision which addresses all the needs of persons with disabilities.⁹²

⁸⁹ Supra note at 36, p. 17.

⁹⁰ Ibid.

⁹¹ Supra note at 87.

⁹² Ibid. p. 29.

2.1.3.3 The Social Model

The social model sees the ‘problem’ of disability as lying in society, not in the individual with impairment.⁹³ It is not the impairment which disables, but attitudinal and other barriers in society at large. Rehabilitation conducted within a comprehensive social framework is about the removal of barriers at the individual level; it is also about the removal of physical and attitudinal barriers in society at large.⁹⁴

The social model was developed in response to the medicalization of disability and its profound negative effects on the self-identity of many people with disabilities, and the negative attitudes that tend to be inherent in the charity and medical models.⁹⁵ The social model aims to create a better understanding of the rights of people with disabilities and the imperativeness to overcome the economic, social, and environmental barriers that affect their ability to engage in community life like other citizens.⁹⁶

However, critics of the social model make two important points.

- First, impairment itself can be a barrier to full participation in society, regardless of social attitudes and appropriate accommodation.
- Second, people with disabilities are a vulnerable group and do need help through social protection measures. In countries where these exist, disability organizations would be very unhappy if they were reduced or withdrawn.⁹⁷

Many in the disability movement itself realize that the social model is not sufficient to make a complete analysis of disability.⁹⁸ The human rights model is an attempt to resolve some of its problems.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Supra note at 36.

⁹⁶ Ibid.

⁹⁷ Supra note at 87, p. 30.

⁹⁸ Ibid.

2.1.3.4 The Rights Based Model

The CRPD is based on the human rights approach. This model aims to conceptualize a development framework that focuses on building an inclusive rights-based society that is committed to diversity, equality, and participation of all. This is achieved by recognizing the diversity and uniqueness of people with disabilities. They must be granted equal opportunities for achieving full economic potential and realizing their human rights.⁹⁹

The human rights model developed as a result of two main factors: (a) calls by the disability movement for the recognition that disabled people, like non-disabled people, are entitled to the full enjoyment of human rights; and (b) despite the growth in international conventions on human rights in recent decades, the recognition that persons with disabilities were not visible within these treaties. It was these two factors in particular that gave rise to the CRPD.¹⁰⁰

In this model empowerment has a much broader definition and scope than in the medical and social models. Participation in decision making, changes to the environment, human rights legislation, control over and access to the skills, knowledge, and support systems that facilitate functional independence, are all vital elements.¹⁰¹

Universal rights apply to persons with disabilities like everybody else, but they also have special needs which need to be addressed. Addressing these needs on an individual, case by case basis is part of the process of according rights.¹⁰²

2.1.4 Legal Instruments/Policy Framework of the Rights of Persons with Disabilities

2.1.4.1 International Instruments

The United Nations and its different specialized organizations adopted different conventions and recommendations. These international human rights instruments recognize range of human rights which guarantee fundamental freedoms and equality of human beings. These instruments encompass a variety of rights like civil and political rights, economic, social and cultural rights,

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Supra note at 15.

¹⁰² Supra note at 87.

environmental and developmental rights and the different mechanisms by which these rights should be implemented. Among these instruments some of them directly or indirectly included the human rights of persons with disabilities in general and employment rights of them.

A) Universal Declaration of Human Rights (UDHR)

The first international instrument to recognize different rights of human beings at large is the Universal Declaration of Human Rights. It incorporates the principle of non-discrimination, to the status of customary international law.¹⁰³

Article 1 of the UDHR provides that *'all human beings are born free and equal in dignity and rights...'*¹⁰⁴ In addition to this, article 2 of the document states that *'everyone is entitled to all rights and freedoms set out without distinction of any kind, such as race, colour, sex, language, religion, political, or other opinions, national or social origin, property, birth, or other status.'*¹⁰⁵

UDHR is the first international document to describe equality for all in preventing discrimination against PWDs under the phrase 'other status.' Also they are entitled to have equal rights with other human beings without any discrimination on the grounds of their disability.

In addition to the above rights, article 23 deals about the inclusion of the employment rights in general. Article 23/1 of the UDHR deals with the right to work, to free choice of employment, to just and favourable conditions of work and protection against employment.¹⁰⁶ Though the declaration indicates that employment is the right for any person who is capable to perform the activity to provide protection and promote the favourable conditions has to be fulfilled.¹⁰⁷

¹⁰³ UN, Universal Declaration of Human Rights, 1948, Article 1 and 2.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Id article 23/1

¹⁰⁷ Adere Feye, Employment Opportunities and Situations at Work: the Case of Visually Impaired Women in Addis Ababa, 2000.

B) Convention on the Elimination of all forms of Discrimination against Women

It is a treaty for the rights of women, and it is a pragmatic international agreement addressing the rights of women and girls. Its adoption greatly increased the visibility of women in the human rights system.¹⁰⁸ This in turn creates an awareness of the obstacles to the specific measures needed to remove them. The convention deals on discrimination against women, including WWDs. It requires eliminating discrimination against women by any person, organization or enterprise.¹⁰⁹

CEDAW can make a difference for women and girls, specifically to reduce sex trafficking and domestic violence, provide access to education and vocational training, ensure the right to vote, end forced marriage and child marriage, help mothers and families by providing access to maternal health care and ensure the right to work and own a business without discrimination.¹¹⁰ The convention provides or guarantees discrimination against women which shall be *any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, cultural, civil or any other field.*¹¹¹

In addition to this, article 13 requires state parties to eradicate discrimination against women in other areas of economic and social life. Thus CEDAW protections cover all women in general; they apply equally to WWDs and persons without disabilities similarly.¹¹²

C) Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child in article 23 focuses directly on children with disabilities. Even though no direct obligations have been placed on state parties to take measures to ensure that children with disabilities enjoy a life of dignity, self-reliance and integration with

¹⁰⁸ Linda Hamilton Krieger, *Backlash against the ADA: Reinterpreting Disability Rights*, the University of Michigan Press, 2006, p. 62.

¹⁰⁹ United Nations, *Convention on Elimination of all forms of Discrimination against Women*, 1979, Article 1.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² Selamawit Bahre, *Employment Rights of Women with Disabilities*, Addis Ababa, 2012.

the community, article 23, paragraph 1-4 recognizes the importance of participation in the community, education, training health care, rehabilitation employment and recreation opportunities for children with disabilities.¹¹³ The Committee on the Rights of the Child has however established that the fact that article 23 is dedicated to children with disabilities should not mean that the rights of children with disabilities are limited to that article.

D) Convention on the Rights of Persons with Disabilities

The Convention was adopted on the 13th of December 2006 by the General Assembly of the United Nations. Reiterating the claim made many times by national and non-governmental delegations in the course of CRPD negotiations, Ambassador MacKay, chairman of the Ad Hoc Committee that developed the CPRD text, characterized the CPRD as embodying a ‘paradigm shift’ away from a social welfare response to disability to a rights-based approach.¹¹⁴

Article 27/1 of the convention recognizes the employment rights of persons with disabilities as follows: “the right of persons with disabilities to work, on an equal basis with others which includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.”¹¹⁵ The second limb of art.27 makes clear that “states parties shall safeguard and promote the realization of the right to work by taking appropriate steps through legislation.”¹¹⁶ The legislative measures should be directed towards the “prohibit[ion] of discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions.”¹¹⁷ Moreover, these measures should “protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of

¹¹³ UN, The United Nations Convention on the Rights of the Child (CRC), 1989, Art.23 para. 1-4, pp. 7-8.

¹¹⁴ Don, MacKay, *From Vision to Action: The Road to Implementation of the Convention on the Rights of Persons with Disabilities*, New York, 30 March 2007.

¹¹⁵ *Supra* note at 24, Article 27 (1) b

¹¹⁶ *Ibid.* article 27 (1)

¹¹⁷ *Ibid.* article 27 (1) a

equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances.”¹¹⁸

It is thought that the legislative measures should “Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others.”¹¹⁹ They have to “Enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services and vocational and continuing training” that would “promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment.”¹²⁰ In furtherance, governments are expected to “Employ persons with disabilities in the public sector and “Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programs, incentives, and other measures.”¹²¹ More importantly, states parties should “Ensure that reasonable accommodation is provided to persons with disabilities in the workplace.”¹²²

E) Employment Rights of persons with Disabilities under ILO Instruments

The promotion and realization of standards, and fundamental principles and rights at work, the creation of greater opportunities for women and men, the security of decent employment, and the enhancement of the coverage and effectiveness of social protection for all were the principal strategic objectives of the International Labour Organization.¹²³

The first international instrument containing provisions relating to the vocational rehabilitation of workers with disabilities was adopted by the International Labour Conference in 1925, just a few years after the establishment of the International Labour Organization.¹²⁴ Interest in vocational rehabilitation and employment opportunities for persons with disabilities re-surfaced

¹¹⁸ Ibid, article 27 (1) b

¹¹⁹ Ibid, article 27 (1) c

¹²⁰ Ibid, article 27 (1) d and e.

¹²¹ Ibid, article 27 (1) g.

¹²² Ibid, article 27 (1) i.

¹²³ Shimelis Ashagre Asfaw, the Enforcement of the Employment Rights of Persons with Disabilities in Ethiopia, Addis Ababa, Ethiopia, 30 June 2009.

¹²⁴ Ibid.

during the Second World War, largely because of the number of people disabled during the war and the need to find trained workers to fill jobs left vacant by mobilized workers.¹²⁵ In May 1944, the International Labour Conference adopted a comprehensive Recommendation (No. 71) on employment services, including labour market information, vocational guidance and vocational training. One of the groups specifically covered by the Recommendation was disabled workers who, ‘whatever the origin of their disability, should be provided with full opportunities for rehabilitation, specialized vocational guidance, training and retraining, and employment on useful work’.¹²⁶ The Recommendation provides early examples of a number of concepts such as mainstreaming, equality of opportunity and affirmative action.¹²⁷

In addition to the above cited instruments, Convention Nos. 77 and 78, and Recommendation No. 79, concerning medical examination of young people for fitness for employment, called for appropriate measures to be taken by the competent authority for vocational guidance and vocational rehabilitation in respect of young persons with disabilities in 1946.¹²⁸ Furthering its focus, ILO has issued Recommendation No. 83 and Convention No. 88 adopted in 1948, concerning the organization of employment services, called for special measures to meet the needs of workers with disabilities and recommended ‘conditions or special studies’ on such questions as the placement of disabled workers.¹²⁹ Above all the 1952 Convention No. 102 on Social Security (Minimum Standards) called on the institutions or government departments administering medical care to cooperate with the general vocational rehabilitation services, with a view to the return to suitable work of disabled workers.¹³⁰

Abreast, ILO Convention No. 111 and Recommendation No. 111 concerning Discrimination in Employment and occupation, which were adopted in 1958, outline policies of non-discrimination in the promotion of equal opportunity and treatment in employment.¹³¹

¹²⁵ Ibid.

¹²⁶ ILO, Employment (Transition from War to Peace) Recommendation, 1944, No. 71, S.X.

¹²⁷ Ibid.

¹²⁸ Medical Examination of Young Persons (Industry) Convention, 1946, No. 77;

¹²⁹ Employment Service Convention, 1948, No. 88; Employment Service Recommendation, 1948, No. 83.

¹³⁰ Social Security (Minimum Standards) Convention, 1952, No. 102, Art. 35

¹³¹ ILO, Discrimination (Employment and Occupation) Convention, 1958, No. 111: Discrimination (Employment and Occupation) Recommendation, 1958, No. 111.

In addition ILO Convention No. 142 in 1975 called on member states to develop comprehensive and coordinated policies and programs of vocational guidance and vocational training, closely linked with employment, in particular through public employment services.¹³² Systems of vocational guidance, including continuing employment information, were to be extended to ensure that comprehensive information and the broadest possible guidance would be available to all, including persons with disabilities.¹³³ Recommendation No. 150 in spelling out in considerable detail how the provisions of Convention No. 142 should be effected articulates that “persons with disabilities should have access to mainstream vocational guidance and vocational training programs provided for the general population or, where this was not desirable, to specially adjusted Programs” [and] “recommended [in furtherance] that every effort should be made to educate the general public, employers and workers on the need to provide persons with disabilities with guidance and training to enable them to find suitable employment, on the adjustment in employment which some of them might require, and on the desirability of special support for them in their employment. Persons with disabilities were, as far as possible, to be integrated into productive life in a normal working environment.”¹³⁴

ILO adopted the vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159 and Recommendation No. 168 in 1983. The Convention requires member states, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons.¹³⁵ The emphasis on full participation is reflected in art. 1 (2), which describes the purpose of vocational rehabilitation as being to enable a person with disability to secure, retain and advance in suitable employment and “thereby to further such person’s integration or reintegration into society.”¹³⁶

ILO has made the equality theme run through Recommendation No. 168:

¹³² ILO, Human Resources Development Convention, 1975, No. 142.

¹³³ Ibid.

¹³⁴ ILO, Human Resources Development Recommendation, 1975, No. 150.

¹³⁵ ILO, Convention No. 159/1983 on the Vocational Rehabilitation and Employment of Disabled Persons, 1983.

¹³⁶ Ibid.

- “Disabled persons should enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment (Article 7):
- In providing vocational rehabilitation and employment assistance to disabled persons, the principle of equality of opportunity and treatment for men and women workers should be respected art, 8.
- Measures should be taken to promote employment opportunities for disabled workers which conform to the employment and salary standard applicable to workers generally art. 10.
- Article 16 of the Recommendation reminds members that such measures should include the making of ‘reasonable adaptations to workplaces, job design, tools, machinery and work organization’ to facilitate training and employment. Given the increasing shift away from the “medical” to the “social-constructionist” model which was then beginning to take place at national as well as international level, the recommendation is forthright in stating that persons with disabilities should be informed “about their rights and opportunities in the employment field.”¹³⁷

2.1.4.2 Regional Instruments

A) The African ‘Banjul’ Charter on Human and Peoples Rights

The African Charter on Human and Peoples Right encourages states to fulfil the following duties regard to PWDs. States parties are encouraged under this charter to ensure the rights of the aged and disabled persons to have special measures of protection in keeping with their physical or moral needs.¹³⁸

Though according to this charter states parties are also encouraged to use their available resources with a view to achieve progressively the full convenience of the mentally and

¹³⁷ Supra note at 92.

¹³⁸ OAU, the African Charter on Human and Peoples’ Rights, Banjul, 1986.

physically disabled person to movement and access to public high ways, buildings and other places to which the disabled may legitimately want to have access.¹³⁹

B) The African Youth Charter

The African Youth Charter deals about young persons who are described to the enjoyment of their rights and freedoms as it is recognized under the charter. Thus in this charter the principle of non-discrimination is guaranteed irrespective of their race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, birth or other status.¹⁴⁰ So, according to this provision, it guarantees non-discrimination with all the provided grounds and as it is stated with the phrase or other status which also include with it that disability cannot be a ground for the issue of discrimination.

C) The African Decade of Persons with Disabilities and Continental Plan of Action

The African Decade of Persons with Disabilities aims to achieve the full participation, equality and empowerment of PWDs. In order to achieve the aforementioned aims there is the continental plan of action which aimed at implementing priority activities on disability during the African decade on disabled people.¹⁴¹ The objective of the action plan is mainly to encourage the full participation of PWDs in social and economic developments in Africa through formulation of policies and national programs. By due course of time it promotes more efforts that encourage positive attitudes towards children, youth, women and adults with disabilities. The implementation of measures to ensure their access to rehabilitation, education, training and employment, as well as to cultural and sports activities and access to physical environment are given special attention.¹⁴²

Consequently, it provides that to achieve the goal of the decade, it should be implemented in accordance with different governmental, non-governmental and other institutions which are related to work on the objectives of the plan of action.

¹³⁹ Ibid.

¹⁴⁰ The African Union, African Youth Charter July, 2006.

¹⁴¹ AU, Continental Plan of Action for the African Decade of Persons with Disabilities (1999-2009).

¹⁴² Ibid.

However, in doing so, mainly to achieve their objectives member states have obligations to fulfil as they are party to plan of action. It could be expected by reviewing or amending, adopting different national legislations or by amending laws that have negative implications on the lines of PWD.¹⁴³

The plan of action guarantees the protection of the rights of PWDs to have full participation in different activities and to ensure that they are participating in activities equally like any others. Thus, objective 6 of the plan of action states to ensure and improve access to rehabilitation, education, training, employment, sports, and the cultural and physical environment.¹⁴⁴

2.1.4.3 National Instruments

A) FDRE Constitution

The Constitution is the supreme law of the country. This basic document establishes the rights and duties of citizens. The FDRE Constitution states that all human beings are *equal before the law and are entitled to equal protection of the law without distinction in respect to race, nationality, colour, sex, language, religion, or political opinion, social or any other status.*¹⁴⁵

Thus according to this provision as the equality of all human beings is stated, the rights of PWDs are also included under this provision within the phrase ‘other statuses. Here it includes PWDs to be protected equally like others and it declares that they are equal before the law without any discrimination. Furthermore article 41/5 of the constitution also sets out the states responsibility for the provision of the necessary rehabilitation and support services for PWDs. The constitutional provision reads as follows; “The state shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian.”¹⁴⁶

In addition to this the constitution under article 9/4 provides that international instruments which Ethiopia has ratified have equal status and acceptance as the national laws of the country.¹⁴⁷ Thus

¹⁴³ Ibid.

¹⁴⁴ Ibid. p. 9.

¹⁴⁵ FDRE, Federal Negarit Gazeta, Proclamation No. 1/1995, article 25.

¹⁴⁶ Ibid, article 41/5.

¹⁴⁷ Ibid, article 9/4.

Ethiopia has adopted the UN convention on the rights of persons with disabilities. It is specific legislation which deals about the rights of PWDs and the adoption of this convention by Ethiopia makes it part of the country's law.

The other constitutional provision extending general protection for PWDs is article 13 of the constitution. Article 13/2 of the constitution requires the interpretation of the chapters dealing with human rights to be interpreted in conformity with internationally ratified treaties, agreements and conventions.¹⁴⁸ In line with this article Ethiopia has ratified the UNCRPD through proclamation No. 676/2010 in 2010.¹⁴⁹

B) Labour Proclamation 377/2003

The 2003 Labour Proclamation has no specific provisions which deal with employment opportunities for persons with disabilities. Article 14(1) (f) states that it shall be unlawful for an employer to discriminate against workers on the basis of nationality, sex, religion, political outlook or on any other conditions.¹⁵⁰ Discrimination on the basis of disability is not explicitly mentioned, although the clause '*any other conditions*' can be taken to include disability.

Under Article 29, the Proclamation ensures security of employment for disabled persons, by protecting them from dismissal when reduction of workers takes place in an undertaking:

*'Whenever a reduction of work force takes place [...] workers having skills and higher rate of productivity shall have priority of being retained in their posts and, in the case of equal skill and rate of productivity, the workers to be affected first by the reduction shall be in the following order : [...] those having the shortest length of service in the undertaking; those who have fewer dependents; those not covered under sub-article 3(a) and (b) of this Article; those who are disabled by an employment injury in the undertakings; workers' representatives; expectant mothers'.*¹⁵¹

¹⁴⁸ Ibid, article 13/2.

¹⁴⁹ FDRE, A Proclamation to Ratify the Convention on the Rights of Persons with Disabilities, Proclamation No. 676/2010, Addis Ababa, 2010.

¹⁵⁰ FDRE, Labour Proclamation 377/2003, 2003.

¹⁵¹ Ibid.

C) Federal Civil Servant Proclamation 515/2007

Article 13 Sub-Article 1 of the 2007 Federal Civil Servants Proclamation prohibits discrimination because of ethnic origin, sex, religion, political outlook, disability, HIV/AIDS or any other ground.¹⁵² Article 13 sub-article 3 of Proclamation 515/2007 expresses affirmative action to certain social groups including persons with disabilities with respect to recruitment, promotion and deployment as follows.

'Notwithstanding the provisions of Sub-Articles (1) and (2) of this Article, in recruitment, promotion and deployment preferences shall be given to:

- a) Female candidates;*
- b) Candidates with disabilities; and*
- c) Members of nationalities comparatively less represented in the government office, having equal or close scores to that other candidates',¹⁵³*

The Federal Civil Servant Proclamation goes further by effectively providing for affirmative action in the recruitment of persons with disabilities. It prescribes that meeting the passing score is sufficient for applicants with disabilities competing for vacancies and that those meeting this score get preference in appointments:

'Priorities of appointment shall be given to candidates with disabilities who meet the minimum passing score',¹⁵⁴

D) Employment Rights of Persons with Disabilities Proclamation No. 568/2008

The Proclamation concerning the Rights of Persons with Disabilities to Employment No.568/2008 is the only legislation in Ethiopia which specifically provides for the employment of persons with disabilities.¹⁵⁵

The Proclamation aims to protect and promote the rights of persons with disabilities to appropriate training, employment opportunities and salary, and to prevent any workplace discrimination. Sections 4 and 5 of the proclamation refer to the promotion of employment

¹⁵² FDRE, Federal Civil Servant Proclamation 515/2007, 2007.

¹⁵³ Ibid.

¹⁵⁴ Ibid

¹⁵⁵ Supra note at 8.

opportunities for disabled persons in the open labour market.¹⁵⁶ They state that no selection criteria shall refer to the disability of the candidate, and that necessary equipment shall be provided to allow a disabled person to carry out his duty. Article 7 provides for grievance procedures:

*‘Any person with disability who alleges that discrimination on the ground of his disability existed with respect to recruitment, promotion, placement, transfer or other conditions of employment may institute a suit to the competent court on the issue without the requirement of the burden of proof’.*¹⁵⁷

The proclamation authorizes the Council of Ministers to issue regulations necessary for the proper implementation of the proclamation.¹⁵⁸ Also it gave a mandate in saying “the Ministry of Labor and Social Affairs, the Federal Civil Service Agency and the appropriate regional organs may, in their respective jurisdiction, issue directives necessary for the proper implementation of this Proclamation.”¹⁵⁹ In addition, the task to follow up and ensuring the proper implementation of provisions of the proclamation and any other provisions that might be issued under the regulation or directives pursuant to the proclamation is left to the Ministry of Labor and Social Affairs, the Federal Civil Service Agency and the appropriate regional organs.¹⁶⁰ Since both organs, by their very nature, manage and control job relationships with in governmental offices and private undertakings respectively, they expectedly will have a near sight to any employment relationship of a person with disability in such offices or undertakings thereby being able to follow up the proper implementation of the proclamation.

The prohibition of discrimination is not limited to the recruitment or selection level of new applicants, candidates of promotion, training etc. Rather, after employed “any person with disability shall have the right to get the wage and other benefits of the position he occupies.”¹⁶¹ No discrimination, in this regard, shall the employer exhibit on the employee with a disability in terms of wage and other benefits because he is with disability.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Supra note at 132, Article 9/1

¹⁵⁹ Id. Article 9/2

¹⁶⁰ Id. Article 9/3

¹⁶¹ Supra note at 8, Article 4/4.

As a result of the prohibition of discrimination against persons with disability in a work place, the proclamation, in general terms, outlaws “any law, practice, custom, attitude or other discriminatory situations that impair the equal opportunities of employment of a disabled person.”¹⁶² As instances, the proclamation provides two main situations which are considered discriminatory. First, a selection criterion of applicants for a vacant, promotion, transfer, placement, etc. if made to exclude persons with disability, is totally discriminatory.¹⁶³ Specifically speaking also, “no selection criteria shall refer to disabilities of a candidate unless the nature of the work dictates otherwise.”¹⁶⁴ For instance, an employer can not set a criterion of full health for a vacant of project coordination. Since the job in the example require no sight, hearing capability, physical integrity, etc. the vacancy should not mention one of them as a criterion for that job. Thus, selection criteria either directly referring to disability other than the nature of the job or indirectly affecting persons with disability are prohibited discriminatory acts. Secondly, “when a disabled person is not in a position to exercise his equal right of employment opportunity, as a result of absence of a reasonable accommodation, such an act shall be regarded as discrimination.”¹⁶⁵ The phrase “Reasonable accommodation” is defined as “an adjustment or accommodation with respect to equipment at the work place, requirement of the job, working hours, structure of the business and working environment with a view to accommodate persons with disabilities to employment.”¹⁶⁶ This is, in general, to create suitable working environment for employees with disability. Such accommodations could be like adopting assistive technologies, building ramps, etc. These accommodations should be reasonable in that they must not result in undue burden on employers. Here, an accommodation becomes undue burden when “an action that entails considerable difficulty or expense on the employer in accommodating persons with disabilities when considered in light of the nature and cost of the adjustments, the size and structure of the business, the cost of its operations and the number and composition of its employees.”¹⁶⁷

¹⁶² Id, Article 5/1.

¹⁶³ Id, Article 5/2.

¹⁶⁴ Id, Article 4 /3.

¹⁶⁵ Id, Article 5/3.

¹⁶⁶ Id, Article 2/5.

¹⁶⁷ Id, Article 2/6.

E) Ethiopian Building Proclamation 624/2009

The 2009 Building Proclamation of Ethiopia provides for accessibility to public buildings for persons with physical disabilities. Article 36 Sub-Article 1 states ‘*Any public building shall have a means of access suitable for use by physically impaired persons, including those who are obliged to use wheelchair and those who are able to walk but unable to negotiate steps*’.¹⁶⁸ Sub article 2 under the mentioned article also depicts ‘*where toilet facilities are required in any building, as adequate number of such facilities shall be made suitable for use by physically impaired persons and shall be accessible to them*’.¹⁶⁹

F) Proclamation 691/2010: Definitions of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia

Article 10 of Proclamation No. 691/2010 provides for common powers and duties of Ministries in which each Ministry shall by law has the power and duties in its area of jurisdiction to create favourable conditions for persons with disabilities. Sub-Article 5 under article 10 of this proclamation states that each Ministry shall have to ‘*create, with in its powers, conditions whereby persons with disabilities and H.I.V. AIDS victims benefit from equal opportunities and full participation*’.¹⁷⁰

G) Developmental Social Welfare Policy

The Ministry of Labour and Social Affairs issued Developmental Social Welfare Policy in 1996 in order to create a favourable social condition for segments of the population whose social welfare is a priority concern.¹⁷¹ The policy aims to address the social problems of groups considered to be vulnerable, i.e. children, the youth, the family, women, the elderly and persons with physical and mental impairment.

Because the focus area of the policy is social welfare of these groups, the policy has the objectives like expanding participatory developmental social welfare programs and services.

¹⁶⁸ FDRE, Ethiopian Building Proclamation 624/2009, 2009.

¹⁶⁹ Ibid.

¹⁷⁰ FDRE, Proclamation 691/2010: Definitions of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, 2010.

¹⁷¹ MOLSA, Developmental Social Welfare Policy, 1996, p. 52.

Also, it has the objective of developing preventive measures to social problems based on studies, rehabilitating members of society who are already suffering from various social problems and require special treatment and attention.¹⁷²

The policy maintains conditions that enable PWDs to be self-supportive and active participants in the countries. Thus it advocates for the provision of education and skill training, gainful employment opportunities, medical/health services and institutional care services.¹⁷³

It also promotes public awareness programs, the removal of physical barriers, providing support to those involved in providing services to persons with physical and mental impairments and taking legislative measures to ensure the welfare of PWDs.¹⁷⁴

The policy regards to the provisions of education, skill training, employment and the like have the potential to improve the participation of PWDs. Even though there is a framework of action, specific strategies and plan of actions which should be adopted to bring about the desired changes explained in the policy, duties and responsibilities of organs in implementing this particular aspect of the policy have also been considered. Moreover, the present developmental social welfare policy is currently under revision according to the information that the writer of the study gathered from the Ministry of Labour and Social Affairs.

H) The Growth and Transformation Plan (GTP)

The Growth and Transformation Plan (GTP) was formulated and accepted by FDRE House of Peoples' Representatives (HPR) in 2010. This document attempts to pay attention by incorporating the right protective clauses PWDs under section 8.3 of this plan. From the outset the plan was presented for the warm discussion to the members of HPR, Executive organs, NGOs, DPOs and the public at large to gather relevant feedbacks to develop the document. Hence, section 8.3 of the plan provides about the disability under social welfare section as follows: "On the course of promoting the economic and social development of the country the social welfare main emphasis lies in protecting rights and facilitating conditions which will enable persons with disability and older people to use their abilities as individuals or in

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

association with others to contribute to the development of society as well as to be self-supporting in the political, economic and social activities of the country...[T]he programs that are implemented for people with disabilities (PWDs) are programs that aim in preventing disability and providing education and training for PWDs and rehabilitating them and have equal access and opportunities as well as by providing information about disability and PWD changing the society's attitude towards disability and PWDs positively.”¹⁷⁵

In addition to the above general clause the plan has briefly set out the relevant purposive points to be implemented within the five years period.

2.2 Discrimination of PWDs at Workplace

There are positive and negative types of discrimination made for and against PWDs. Positive discrimination is a kind of “preferential or differential treatment of a certain group of people in order to remedy the injurious effects of historical unfair treatments or practices”¹⁷⁶ Positive discrimination thus, can be understood and properly practiced in relation to PWDs within the context of proper concept of disability and sound legislative grounds.¹⁷⁷

According to Abreham and Woldesenbet, there are three variants of negative discrimination: discrimination in law [direct discrimination], discrimination in practice and indirect discrimination.¹⁷⁸ Direct discrimination is the first type of negative discrimination, existing “when unequal treatment stems directly from laws, rules or practices making an explicit difference on one particular ground.”¹⁷⁹ On the other hand, discrimination in practice is “the specific attitude of a public authority or a private individual that treats unequally, persons or members of a group on a prohibited ground ...”¹⁸⁰ Indirect discrimination presupposes “apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics.”¹⁸¹

¹⁷⁵ Supra note at 29.

¹⁷⁶ Abreham worku and Woldesenbet Birhanemeskel, *Employment of Persons with Disabilities in the Civil Service of Ethiopia*. Addis Ababa: Help for Persons with Disabilities-Organization, 2005, p. 17.

¹⁷⁷ Ibid, pp. 15-17.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

According to ILO, indirect discrimination in employment occurs when “the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, color, sex or religion and is not closely related to the inherent requirements of the job.”¹⁸² The Americans with Disabilities Act [ADA], as Player notes, establishes specific components of discrimination in employment to include:

- A. Participating in contractual arrangements that have the effect of subjecting the covered entity’s [whose jurisdiction falls under the Act and covered by the Act [applicants or employees to discrimination;
- B. Utilizing standards or criteria that have the effect of discriminating on the basis of disability that are not justified in terms of job relatedness and business necessity;
- C. Excluding or denying equal job benefits because of a known disability of an individual with whom the qualified individual is known to have a relationship or association;
- D. Not making reasonable accommodations to known limitations of individuals with disabilities unless the covered entity by the Act can demonstrate that the accommodation would impose an undue hardship on the operation of the business;
- E. Denying opportunities to a qualified individual if such denial is based on the need of the covered entity by the Act to make reasonable accommodations; and,
- F. Failing to select and administer tests in the most effective manner.¹⁸³

2.3 Reasonable Accommodations/Adjustment at Workplaces

2.3.1 The Emergence of Reasonable Accommodation

The term ‘reasonable accommodation’ was born in the United States and was first used in connection with a duty to accommodate the religious beliefs of employees. Such a duty was created in 1972 by way of an amendment to the Civil Rights Act 1964.¹⁸⁴ It required an employer

¹⁸² International Labor Organization, *Equality in Employment and Occupation*, International Labor Conference Eighty-Third Session, Geneva: International Labor Office, 1996, p. 13.

¹⁸³ Mack Player, *Federal Law of Employment in A Nut Shell*, Fourth Edition, Santa Clara University, School of Law, West Group St. Paul, Minn. 1999, pp. 242-243.

¹⁸⁴ Anna Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment*, Hart Publishing, Oxford and Portland, Oregon, 2008, p. 5.

to ‘reasonably accommodate to an employee’s or prospective employee’s religious observance or practice’ unless this would impose ‘undue hardship on the conduct of the employer’s business’.¹⁸⁵ This provision, however, has been restrictively interpreted and consequently imposes only minimal obligations.¹⁸⁶

Duties to make reasonable adjustments or accommodations in favour of disabled people also originate in the United States. These duties, although not expressly stated in the Rehabilitation Act 1973, were introduced by its accompanying interpretive regulations in what has been described as ‘a remarkable example of legislating via administrative rule-making’.¹⁸⁷ It was only on the enactment of the Americans with Disabilities Act 1990 (ADA) that protection from disability discrimination was extended to the private sector. This Act is closely modeled on the Rehabilitation Act 1973, which continues in force.¹⁸⁸

The advent of the ADA undoubtedly acted as a powerful catalyst for the enactment of the Disability Discrimination Act 1995 (DDA) in Britain. Indeed, its influence has been impressively far-reaching, and numerous countries across the globe have now followed the lead it provides and introduced laws prohibiting disability discrimination.¹⁸⁹

2.3.2 Reasonable Accommodation to Persons with Disabilities in Light of Human Rights

In the context of disability, the importance of responding to the differing needs and circumstances of each individual, as a pre-condition of effective human rights protection, was recognized in the World Program of Action concerning Disabled Persons.¹⁹⁰ According to it,

[t]he principle of equal rights for the disabled and non-disabled implies that the needs of each and every individual are of equal importance, that these needs must be made the basis for the

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ B Doyle, *Disability Discrimination and Equal Opportunities: A Comparative Study of the Employment Rights of Disabled Persons*, London, Mansell, 1995, p. 221.

¹⁸⁸ Supra note at 182.

¹⁸⁹ Ibid.

¹⁹⁰ Supra note at 182.

*planning of societies, and that resources must be employed in such a way as to ensure, for every individual, equal opportunity for participation.*¹⁹¹

These words were echoed a decade later in both the non-binding Standard Rules on the Equalization of Opportunities for Persons with Disabilities,¹⁹² and the Committee on Economic Social and Cultural Rights' General Comment No 5.¹⁹³ Given the stress they placed on responding appropriately to the needs and circumstances of a particular disabled individual, the emergence of some form of reasonable accommodation duty was perhaps inevitable.¹⁹⁴

The concept of reasonable accommodation was explicitly acknowledged to be an integral element of equality in General Comment No 5. The Committee on Economic, Social and Cultural Rights there stressed that Article 2(2) of the ICESCR required States to ensure that the rights conferred by that Convention should be enjoyed by all citizens without any discrimination on the ground of disability.¹⁹⁵ For this purpose, it specified that disability-based discrimination included:

*any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights.*¹⁹⁶

It is not difficult to imagine scenarios in which the denial of a reasonable accommodation would nullify the recognition or enjoyment of such rights. The right to work would be effectively nullified for many disabled people if employers were entitled to treat them in exactly the same way as their non-disabled colleagues without any obligation to consider adapting timetables, physical features or equipment to accommodate their needs.¹⁹⁷

¹⁹¹ United Nations General Assembly Resolution 37/52 (3 December 1982), paragraph 25.

¹⁹² Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by General Assembly Resolution 48/96 of 20 December 1993, paragraphs 25 and 26.

¹⁹³ General Comment No 5 'Persons with Disabilities' adopted by the Committee on Economic, Social and Cultural Rights at its 11th session in 1994 (UN Doc E/1995/22), paragraph 17.

¹⁹⁴ *Supra* note at 182.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Supra* note at 191, paragraph 15.

¹⁹⁷ *Supra* note at 182.

Some notion of reasonable accommodation also seems to have been recognized in the context of civil and political rights prior to the CRPD. In summary, even before the CRPD, there was an understanding that the human rights of disabled people would be effectively enjoyed and protected only if their different circumstances and needs were recognized and, where reasonable, accommodated. The CRPD, as will be seen in the next Section, builds on this understanding. Indeed, one of its central aims is to clarify this understanding and to give it context.

As Anna Lawson stated,

Starting from a human rights perspective means recognizing that human beings do not all start from the same place. The approach recognizes that as we tackle the differing dimensions to exclusion, address multiple exclusion and the cumulative effect of different forces on the individual ... we do not lose sight of that individual. This focus on the individual means that barriers need to be actively dismantled and reasonable adjustments made to ensure equitable outcomes for all people ... The DRC hopes that one day we will get to the situation where human rights and disability rights are regarded as one in the same and where there is a thriving human rights culture in this country.¹⁹⁸

2.3.3 Reasonable Accommodation under the Americans Disability Act (ADA)

The ADA is a federal civil rights law that was passed in 1990 and went into effect beginning in 1992.¹⁹⁹ ADA defined reasonable accommodation as a modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity.²⁰⁰ Also according to this Act, an equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly-situated employee without a disability.²⁰¹ The ADA requires reasonable accommodation in three

¹⁹⁸ Ibid.

¹⁹⁹ USA Office of Disability Employment Policy (ODEP), Job Accommodation Network, Morgantown, Updated 05/15/09, p. 5

²⁰⁰ Ibid.

²⁰¹ Ibid.

aspects of employment: 1) to ensure equal opportunity in the application process, 2) to enable a qualified individual with a disability to perform the essential functions of a job, and 3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.²⁰²

Its purpose is to protect people with disabilities from discrimination in employment, in the programs and activities offered by state and local governments, and in accessing the goods and services offered in workplaces. The focus of the Act is prohibiting discrimination in employment and requires employers to provide reasonable accommodations for employees with disabilities.²⁰³

The Act protects qualified employee with disability which includes individual satisfies the skill, experience, education, and other job-related requirements of the position sought or held, and can perform the essential job functions of the position, with or without reasonable accommodation.²⁰⁴

According to this Act the following fundamental elements are specified as part of reasonable accommodations to PWDs at work place. These are making existing facilities accessible; job restructuring; part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; providing qualified readers or interpreters; and reassignment to a vacant position.²⁰⁵

Making "reasonable accommodation" to the known physical or mental limitations of a qualified applicant or employee with a disability is generally regarded as a key to the successful employment of persons with disabling conditions. The ADA considers "reasonable accommodation" as efforts that may include:

- making existing employee facilities accessible to individuals with disabilities
- job restructuring
- part-time or modified work hours
- acquisition or modification of equipment or devices

²⁰² Ibid, p. 6

²⁰³ Susanne M. Bruyère, Ph.D., Reasonable Accommodation under the ADA: Program on Employment and Disability, School of Industrial and Labor Relations – Extension Division, Cornell University, 2000, p. 2.

²⁰⁴ Ibid.

²⁰⁵ Ibid, p.1.

- appropriate adjustment or modifications of examinations, training materials, or policies
- provision of qualified readers or interpreters
- reassignment to a vacant position.²⁰⁶

ADA identified three categories of reasonable accommodation:

- job application process modifications or adjustments that enable a qualified individual with a disability to be considered for the position he or she desires,
- work environment modifications or adjustments (or changes to the manner or circumstances under which the position held or desired is customarily performed) that enable a qualified individual with a disability to perform the essential functions of that position,
- benefits modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.²⁰⁷

According to ADA "Essential job functions" are fundamental job duties of the employment position the individual holds or desires. The term does not include the marginal functions of the position.

To be a qualified individual with a disability in the employment context, the applicant or employee must satisfy the requisite skill, experience, education, and other job-related requirements of the position, and must be able to perform the essential functions of the job with or without reasonable accommodation.²⁰⁸

The ADA regulation states that relevant evidence as to whether a function is essential may include:

- the employer's judgment as to which functions are essential
- written job descriptions prepared before advertising or interviewing applicants for the job
- amount of time spent on the job performing the function

²⁰⁶ Ibid.

²⁰⁷ Americans Disability Act (ADA), Providing Reasonable Accommodations at Workplaces, 1990.

²⁰⁸ Ibid.

- consequences of not requiring the incumbent to perform the function
- terms of collective bargaining agreement
- work experience of past incumbents in the job
- current work experience of incumbents in similar jobs.²⁰⁹

According to ADA “undue hardship” means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation.

Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly disruptive, or those that would fundamentally alter the nature or operation of the business. An employer must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship.²¹⁰ According to ADA there are certain criteria that determine reasonable accommodation. Once a qualified individual with a disability has requested provision of a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation. This is best accomplished through a flexible, interactive process that involves the employer, supervisor and the qualified individual with a disability.²¹¹

This process works well for making accommodations in the job application process and in providing equal benefits and privileges of employment.

The employer/supervisor will:

- “Analyze the particular job involved and determine its purposes and essential functions.
- Consult with the individual with the disability to ascertain the precise job-related limitations imposed by the person's disability and how those limitations could be overcome with a reasonable accommodation.
- Identify potential accommodations (in conjunction with the individual) and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position.

²⁰⁹ Ibid.

²¹⁰ Supra note at 176.

²¹¹ Ibid.

- Consider the preferences of the individual needing accommodation and select and implement the accommodation that is most appropriate for both the employee and the employer.”²¹²

The ADA requires employers to provide reasonable accommodations so that employees with disabilities can enjoy the "benefits and privileges of employment" equal to those enjoyed by similarly situated employees without disabilities.²¹³

Benefits and privileges of employment include, but are not limited to, employer-sponsored: (1) training, (2) services (e.g., employee assistance programs, credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings).²¹⁴

Employers provide information to employees through different means, including computers, bulletin boards; mailboxes, posters, and public address systems.²¹⁵

Employers must ensure that employees with disabilities have access to information that is provided to other similarly situated employees without disabilities, regardless of whether they need it to perform their jobs.²¹⁶

Employers must provide reasonable accommodation (e.g., sign language interpreters; written materials produced in alternative formats, such as Braille, large print, or on audio-cassette) that will provide employees with disabilities with an equal opportunity to participate in employer-sponsored training. This requirement applies to both in-house training and training provided by an outside entity.²¹⁷

2.3.4 Reasonable Accommodations under the United Nations Convention on the Rights of Persons with Disabilities

²¹² Supra note at 203.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

The concept of reasonable accommodation is firmly embedded in the Convention. It is explicitly mentioned in the substantive Articles dealing with education, employment, liberty and security of person.²¹⁸ Further, largely as a result of Articles 2 and 5, it is an implicit element of almost every one of the substantive Articles.²¹⁹ As Kayess and French observe,

*[t]he incorporation of a State obligation to ensure that reasonable accommodations are made to facilitate the exercise by persons with disability of CPRD [sic] rights is perhaps the most fundamental instrumental element of the Convention.*²²⁰

Article 5(2) requires signatory States to ‘prohibit all discrimination on the basis of disability’.²²¹ Such discrimination is defined in Article 2 as follows:

*any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.*²²²

Reasonable accommodation is itself defined in Article 2 as:

*Necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.*²²³

This makes it clear that a duty to provide reasonable accommodation requires States to impose positive obligations on employers, educators, public authorities and others to identify barriers in the way of a PWDs enjoyment of their human rights and to take appropriate steps to remove them.²²⁴

²¹⁸ Supra note at 182, p. 30.

²¹⁹ Ibid.

²²⁰ R Kayess and P French, ‘Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8 Human Rights Law Review 1;

²²¹ Supra note at 24, article 5(2)

²²² Ibid, article 2

²²³ Ibid, article 2

²²⁴ Supra note at 182, p. 30.

The Convention imposes specific obligations relating to accessibility and to universal design. These obligations would clearly cover much of the same ground as would anticipatory reasonable adjustment duties. Both would require steps to be taken, regardless of the appearance on the scene of a particular disabled person, to remove disabling barriers and to ensure that access to products, information and the built environment was maximized.²²⁵ Thus, although it will remain open to States to choose to adopt anticipatory duties in their own domestic systems, it is highly unlikely that this specific form of legal obligation will be required by the Disability Committee. What is beyond doubt is that States will be required to introduce individualized reasonable accommodation duties which are responsive to the circumstances of the particular case.²²⁶

As Article 2 makes clear, the reasonable accommodation duty contemplated in the Convention is subject to a defense of ‘disproportionate or undue burden’.²²⁷ Thus, while the CRPD requires all signatory States to introduce reasonable accommodation duties, their practical manifestations are likely to differ markedly from country to country.²²⁸

Article 5(3) provides:

*In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.*²²⁹

This would appear to require States not only to impose reasonable accommodation obligations on employers, service providers and others but also to take steps to raise awareness of their existence and nature and to facilitate their enforcement.²³⁰

As already mentioned, a failure to make reasonable accommodation is included in the definition of discrimination in Article 2.²³¹ States are therefore required to prohibit such failures by Article 5(2) and to do so immediately, as the right to be free from discrimination is a civil and political

²²⁵ Ibid, p. 31.

²²⁶ Ibid.

²²⁷ Supra note at 182.

²²⁸ Ibid.

²²⁹ Ibid, article 5(3).

²³⁰ Ibid.

²³¹ Ibid, article 2.

right to which the principle of progressive realization does not apply.²³² Reasonable accommodation obligations, however, depart from the traditional conception of the obligations flowing from civil and political rights in that they are highly proactive in nature and likely to require the spending of money.²³³

Because of the expenditure associated with reasonable accommodation, its positioning within the domain of civil and political rights was not free from controversy in the CRPD negotiations.²³⁴ It should be stressed, however, that the concepts of ‘reasonableness’ and ‘undue burden’ will themselves inject some degree of progressive realization into the implementation of reasonable accommodation duties.²³⁵

The concept of reasonable accommodation (together with other related concepts such as accessibility and universal design) operate to move the CRPD away from many of the dichotomies for which human rights law has often been criticized. It is not structured according to whether rights are civil or political on the one hand or economic, social or cultural on the other.²³⁶

2.3.5. Discrimination and Reasonable Accommodation under ILO Conventions and Recommendations

ILO adopted several conventions and recommendations on vocational rehabilitation and employment opportunities of persons with disabilities since its establishment in 1920s. Among the various international instruments Convention No. 111 and Recommendation No.111 concerning Discrimination in Employment and occupation, which were adopted in 1958, outline policies of non-discrimination in the promotion of equal opportunity and treatment in employment.²³⁷

ILO adopted the vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159 and Recommendation No. 168 in 1983. Especially recommendation No. 168 of 1983 under

²³² Ibid, article 5(2).

²³³ Supra note at 182.

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Supra note at 123.

article 16 states about reasonable adaptation or reasonable accommodation “reminds members that such measures should include the making of ‘reasonable adaptations to workplaces, job design, tools, machinery and work organization’ to facilitate training and employment. Given the increasing shift away from the “medical” to the “social-constructionist” model which was then beginning to take place at national as well as international level, the recommendation is forthright in stating that persons with disabilities should be informed “about their rights and opportunities in the employment field.”²³⁸

2.3.6 Reasonable Accommodation under Proclamation No. 568/2008

The right to employment of PWDs proclamation is a land mark legislative document enacted to facilitate the creation of equal opportunity for PWDs in the area of employment.

When we see the scope of the proclamation it applies to employment relationships that exist between any PWDs and employers.²³⁹ So, the scope of application of the proclamation has to be understood by two things. There is what employment relationships mean and who an employer is envisaged by the proclamation.²⁴⁰ Also this proclamation defines “undue burden” which did not appear in the previous proclamation No. 101/1994. The new proclamation defines undue burden as “an action that entails considerable difficulty or expense on the employer in accommodating persons with disabilities when considered in light of the nature and cost of the adjustments, the cost of its operations and the number and composition of its employees.”²⁴¹ Thus it guarantees the employment rights between qualified workers or job seekers with disability and an employer. But this proclamation lacks the objective measuring mechanism of undue burden *vis-à-vis* reasonable accommodation.

²³⁸ Ibid.

²³⁹ Supra note at 8.

²⁴⁰ Ibid.

²⁴¹ Ibid.

The proclamation relies to encourage employers to hire PWDs. It has its own feature which is prohibition of discrimination, the principle of “reasonable accommodation” which is related to the norm of non-discrimination in the eyes of the proclamation; limited affirmative action and reversal of burden of proof are included which not the case in the previous repelled proclamation No. 101/1994.²⁴² According to the new proclamation, reasonable accommodation means “an adjustment or accommodation with respect to equipment at the work place, requirement of the job, working hours, structure of the business and working environment with a view to accommodate persons with disabilities to employment.”²⁴³ According to this proclamation, definition of reasonable accommodation incorporates certain major elements that are appropriate for employment facilities of persons with disabilities. Thus, as the major element the concept of reasonable accommodation in the proclamation, entails equipment at work places, requirement of the job, working hours, structure of the business and working environment. Also to facilitate the employability of PWDs this proclamation promotes and acknowledges the principle of non-discrimination.

The principle of non-discrimination is aimed to bring equality between human beings. It is included under article 5 of the proclamation. It states that a discriminatory situation against PWDs is prohibited and if there are practices that can impair the equal employment opportunities of PWDs during recruitment, promotion and training is happened.²⁴⁴ The act is considered as it is discrimination made against PWDs. Moreover the principle of affirmative action which is applicable to bring equal opportunity in the work place should not be considered as a discriminatory practice.²⁴⁵

In addition to this, article 7 of the proclamation provides that a provision that will encourage PWDs whenever they face discriminatory practice that would enable to exercise their right. It states that ‘any PWDs who alleges that discrimination on the ground of disability existed with

²⁴² Ibid.

²⁴³ Id, definitions.

²⁴⁴ Id, article 5(1).

²⁴⁵ Id, article 5(4).

respect to recruitment, promotion, transfer or any other conditions of employment the person can institute a suit to the court against the defendant without bringing any burden of proof.²⁴⁶

In addition to this provision, article 10 also provides making strong application of suits. Here whenever the laws like the proclamations, regulations, and directives are enforceable properly any PWDs whose rights are violated could institute a case before a court. Hence, it stipulates that if the non-applicability of the law creates any violation on the right of PWDs existed. Their right is protected either by filling a suit by themselves or by any other who is a member can institute the case. It also provides those who violate the provision of the law could be penalized by fine punishment.²⁴⁷

Article 6 of the proclamation stipulates the rights of persons with disabilities at workplace imposing the responsibilities on the employers. To that end this provision reads as follows:

- (a) 'Any employer is required to take measure to provide appropriate working and training materials for PWDs,
- b) Take all reasonable accommodation and measures of affirmative action to women with disability taking into account their multiple burdens that arise from their sex and disability.
- c) Shall assign assistance to enable PWDs to perform work and follow training.'²⁴⁸

Furthermore, as the writer of this study stated earlier the proclamation provides favourable opportunities for PWDs in general and providing matters of non-discrimination, access to appropriate training and employment opportunities, including opportunity for reasonable accommodation and affirmative action, wages and benefits.

This provision stipulates that the principle of non-discrimination "unless the nature of the work dictates otherwise, a person with disability having the necessary qualification and scores more to that of other candidates shall have the right without discrimination, to occupy a vacant post in

²⁴⁶ Id, article 7(1).

²⁴⁷ Id, article 11.

²⁴⁸ Id, article 6.

any office or undertaking through recruitment, promotion, placement, or transfer procedures, to participate in training programs to be conducted either locally or abroad.”²⁴⁹

In addition to this proclamation, there is a directive issued by the Ministry of Labour and Social Affairs in order to effect the applicability of the provisions stated under the proclamation. But the only applicability of this directive is for those having employment relations based on the Labour Proclamation No. 377/2004 that focuses on the enterprises established for profit.²⁵⁰ This is not helpful for civil service employees. Hence, in order to effect the provisions of the proclamation and to protect the rights of PWDs working in civil service institutions the Ministry of Civil Service should issue its own directive.

CHAPTER THREE

3. METHODOLOGY OF THE STUDY

3.1. Introduction

This Chapter discusses the research methods employed in line with the objectives of the study. The chapter is divided into the following sub-headings: description of the study area, research paradigms, the research design, research setting, sampling techniques and sample size, data collection methods and data analysis.

3.2. Description of the Study Area

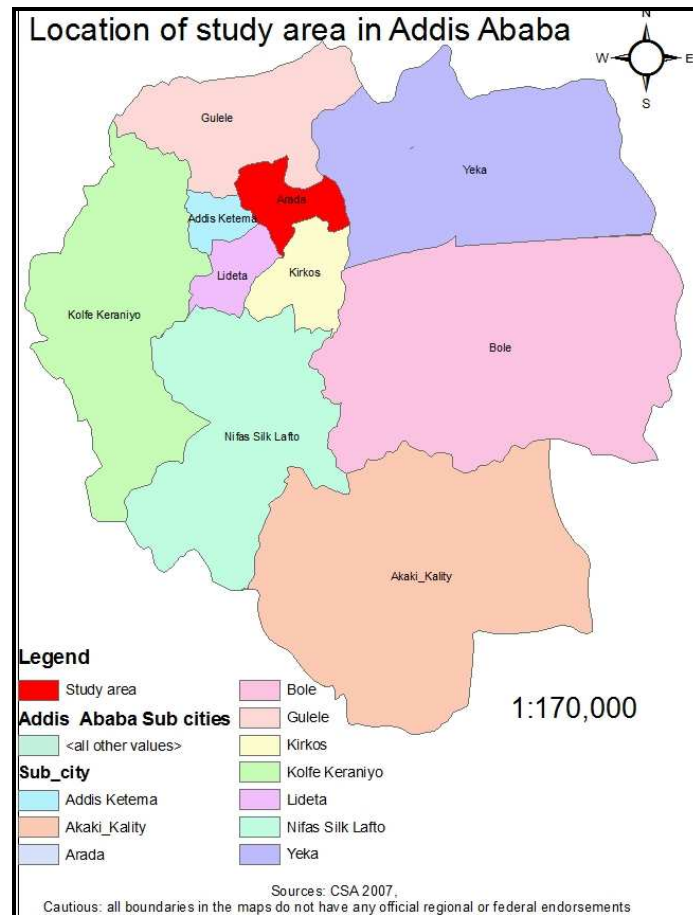
Addis Ababa is the Federal Capital City and the seat of the Federal Government. The City has gained international status by being the seat of the African Union, several international organizations and numerous embassies. Addis Ababa is located in the Central part of Ethiopia and belongs to the Western highlands. All sides of the capital city is bordered by Oromia Regional State, and covers an area of 530 sq. km (53,000 ha). According to the 2007 Population

²⁴⁹ Id, article 4.

²⁵⁰ MOLSA, Employment Rights of Persons with Disabilities Proclamation No. 568/2008 Implementation Directive, April, 2011.

and Housing Census of Ethiopia, the total population of Addis Ababa was 2,739,551. Based on the population projection of 2013 the population of the city may rise to over 3 million.²⁵¹

The capital city Addis Ababa is divided into ten sub cities which are portrayed in this map.



The spatial organization shows that Lideta, Kirkos, Arada and Addis Ketema represent the central areas, whereas Akaki Kaliti, Nefas Silk Lafto, Kolfe Keraniyo, Gulele, Yeka and Bole are bordering Oromia Regional State. Concerning the study area of the researcher, Arada had population of 212,009 and it is one of the densely populated sub-cities of the town. Its population density in 2007 was 18,340 population/km² was the second next to Addis Ketema which was 25,560 population/ km².

²⁵¹Central Statistical Agency, Ethiopia's Facilities and Services Atlas, 2011, pp. 8-9.

Concerning the figure of persons with disabilities, the 2007 census report revealed that there were 805,492 and 32,630 PWDs in Ethiopia and Addis Ababa respectively. Even though there is lack of complete data regarding employers with disabilities according to the Addis Ababa City Government Civil Service Agency there are about 399 workers/civil servants with disabilities in Addis Ababa City Government. This figure doesn't include teachers at different levels of educational institutions and workers of private and non-governmental organization. According to the information of the mentioned agency there are 17 workers with hearing impairment, 144 workers with visual impairment and 238 persons with physical impairment in the city. In Arada sub-city there are about 35 workers with disabilities. Among them 15 are workers with visual impairment, 12 are workers with physical impairment and the remaining 6 are workers with hearing impairment. Having identified the numbers and types of disability in this sub-city the researcher has involved these workers as key informants and FGD respondents/participants employing the purposive or judgmental sampling method to collect the necessary information and data.

3.3. Research Methods

According to James Neil as cited by Dagnachew there are three basic research paradigms: positivism (the quantitative approach), interpretivism (the qualitative approach), and the critical approach.²⁵² Positivism refers to the systematic empirical investigation of quantitative properties and phenomena and their relationships; the objective of the method being to develop and employ mathematical models, theories and/or hypotheses pertaining to a given phenomenon.²⁵³ Interpretivism or the qualitative approach, which is the method this study adopted, is a way to gain insights through discovering meaning by improving our comprehension of the whole.²⁵⁴ Qualitative research explores the richness, depth, and complexity of a certain phenomenon; it involves detailed, verbal descriptions of characteristics, cases, settings, people or systems obtained by interacting with, interviewing and observing the subjects. This paradigm typically

²⁵² Dagnachew Bogale Wakenè, *The Role of Disability Rights Movements in the Ethiopian Development Agenda*, university of Stellenbosch, Faculty of Health Sciences, Centre for Rehabilitation Studies (CRS), Dec. 2010, P. 39.

²⁵³ Ibid.

²⁵⁴ Ibid.

starts with use of a document review to collect data. The Critical Approach which this research partially adopted, on the other hand, explores the social world, critiques it, and seeks to empower the individual to overcome problems in the social world; it enables people to understand how society functions and the methods by which unsatisfactory aspects can be changed.²⁵⁵

3.4. The Research Design

This study has employed the qualitative research method, which is further divided into five main types/designs; namely, the case study, the grounded theory, phenomenology, ethnography and the historical method.²⁵⁶ The qualitative case study design is specifically what the researcher has used in this study. According to Baxter and Jack as cited by Dagnachew, this is an approach that facilitates the exploration of a phenomenon within its context using a variety of data sources and ensuring that the issue is not explored through one lens, but rather a variety of lenses which allow for multiple facets of the phenomenon to be revealed and understood.²⁵⁷ It gives a perspective to the understanding of the research question(s) and social contexts of the local population in its natural setting, emphasizing the relationship between events and providing a comprehensive contextual analysis of the issue being researched. It also helps the researcher to examine a wide range of areas in order to have a holistic grasp of the research topic.²⁵⁸

3.5. The Research Setting

This study is conducted in Addis Ababa, the capital of Ethiopia. The study conducted in Arada sub-city. The participants of this research were workers with disabilities in the mentioned sub-city, three DPOs, governmental organizations responsible for the implementation of employment rights of persons with disabilities at federal and city government level.

3.6. Sampling Techniques and Sample Size

²⁵⁵ Ibid.

²⁵⁶ Ibid, p. 40.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

As it mentioned above, the sampling procedure, which this research employed, is purposive or judgmental. Employees with disabilities in Arada Sub-City were selected for the interview based on their willingness to be interviewed, year of work experience taken into consideration and availability for the interview was confirmed. No interviewee has less than four years work experience in one or more agencies. This was done to be able to gather deep information from those who have more experience and might encounter various problems in different aspects of employment.

Different books [published and unpublished] have been reviewed in order to use them as secondary sources of data and gather information from literature available and written on the issue of disability and employment opportunities of PWDs in general and that of reasonable accommodation in particular. In this regard, ILO publications, Conventions and recommendations have been good sources. Journal articles have also been used as important secondary sources of data. In addition, proclamations and policy documents have been visited to get reliable information on the issue.

Key informant interviews conducted with six government organizations that are responsible for the policy making and placed in charge of implementation of employment rights in general and particularly of reasonable accommodations of persons with disabilities in the country at large and in Addis Ababa City government specifically. Those organizations are House of Peoples' Representative, Ministry of Labour and Social Affairs, Ministry of Civil Service, Addis Ababa Appellate Court, Addis Ababa Labour and Social Affairs Bureau and Capacity Building Bureau in which the civil services affairs coordination section incorporated. Additionally, three national associations of persons with disabilities (DPOs) participated in the interviews. Those participant DPOs were: Ethiopian National Association of the Blind (ENAB), Ethiopian National Association of the Deaf (ENAD) and Ethiopian National Association of the Physically Handicapped (ENAPH).

Focus group discussions held with female workers with disabilities and male workers with disabilities separately since the scope and seriousness of their problems vary based on their sex.

The in-depth interviews were held with workers with disabilities who were selected to be respondents for this study. From the in-depth interviews, this research tried to explore the experience and views of the respondents in relation to: discrimination they might face during

application for a job, promotion, transfer, training and development in their present or other job in the past; their relationship with their coworkers and supervisors; fulfillment of their special and necessary materials and equipment (reasonable accommodations) needed to perform their job; steps they took when they encounter discrimination; possible sources and consequences of the discrimination made against them; the knowledge, attitude and practices the employers, the general public, persons with disabilities themselves have on the conventions, proclamations, regulations, etc. promulgated to promote employment rights of persons with disabilities, steps various bodies should take; etc.

In the discussions, the researcher tried to explore the views of the participants on the employment opportunities and work conditions of PWDs in general and work place accommodations in particular and used the following topics to guide the discussion:

- A. Discrimination made against persons with disabilities (PWDs) in workplaces,
- B. Specific areas or occasions where and when PWDs face discrimination,
- C. Possible sources and consequences of the discrimination made against persons with disabilities,
- D. The policies and legal system of Ethiopia related to disability in general and provision of reasonable accommodation,
- E. The role played and should be played by organizations of and for PWDs to advocate the provision of reasonable accommodation,
- F. Steps need to be taken by various bodies [including PWDs themselves and governmental and non-governmental organizations], etc.

3.7. Data Collection Methods

This study used both primary and secondary sources of data to gather information on the subject matter discussed in this paper. The research entirely depends upon qualitative methods when collecting and analyzing data. Focus group discussion (FGD), key informants interview and in-depth interview are the three major methods employed by this research as primary sources of data. These methods were selected by the research because, they have been found to be more appropriate to gather deep information on the subject and allow flexibility when running

different sessions of interviews, which help to clarify unclear questions and pick important cases needed for the research.

As mentioned above the main data collection methods employed in this study are: in-depth interviews, key informant interviews and focus group discussions (FGDs). Semi-Structured Interview Guides were used as data collection tools for the study.

3.8. Data Analysis

The other major activities followed data collection were transcribing; categorizing and analysis, interpretation, preparation of the first draft and preparation of the document for the final draft and submission of the draft to the concerned bodies.

All transcripts were read several times, until the researcher was satisfied that he was well acquainted with the main issues raised in the interviews. A thematic content analysis was done by identifying common patterns through the color coding of data in terms of frequently raised issues. The codes with common meaning were then grouped into categories from which the main themes and sub-themes were generated to explain the findings, as clarified in Chapter Four below.

CHAPTER FOUR

4. FINDINGS OF THE STUDY

4.1 Background Information of the Respondents

Participants of the in-depth interview were nine in number among whom the three are with hearing impairment, three are visually impaired and the remaining three are physically impaired employees. Regarding their educational level, two of the persons with physical disability are first degree holders and one diploma holder while all the visually impaired persons are first degree holders in law and sociology fields and all employees with hearing impairment are master's degree holders in information technology, special needs and linguistics streams. The majority of physically impaired are male, one of them is visually impaired and one of the employees with hearing impairment are female. Totally, seven of the respondents are males and the remaining two are females. Their age ranges from 28-50. Five of the respondents reported to be married while the remaining four responded to be unmarried.

The range of their years of work experience also varies, the minimum being four and the maximum 28. Seven of the respondents worked for 4-10 years while two of them served for more than 11 years in one or more organizations. Regarding their first employment, the two were directly placed in work settings immediately after graduation by the government and the three became hired in their first trial. The remaining four, as they expressed, succeeded in gaining employment after repetitive trials among which they encountered some denials of the chance to be employed based on their disability. Among the eight who reported to work in two or more organizations, the two came in to their present occupation and work place through structural adjustment based on Business Process Reengineering (BPR) and the other five held their present occupation through transfer initiated by themselves and their respective offices. The remaining two reported as they left their previous work place and came to their present one because of denial of necessary accommodations and discrimination made against them by their bosses on the basis of their disability.

Regarding the educational background of participants of the two FGD (one female FGD and one male FGD discussants), among the female FGD, five are diploma holders and three of them have first degree. Five of the participants of male focus group discussants have first degree and

another one has post graduate degree level of education in social work. Two of them has diploma in management and accounting. All of them have disability: four are workers with physical disability and four are visually impaired and among the female FGD three of them are workers with visual impairment and five of them are workers with physical impairment.

The key informants interviewed were from government organizations that are responsible for implementation and follow-up of employment rights of persons with disabilities. And the advocates of the rights of persons with disabilities that are established to protect the dignities of them, namely, Ethiopian National Association of Physically Handicapped (ENAPH), Ethiopian National Association of Blind (ENAB) and the Ethiopian National Association of the Deaf (ENAD).

4.2 The Way Persons with Disabilities get information about vacancy announcement

The question of vacancy announcement was asked whether the workers with disabilities faced difficulties in finding vacancy announcement or not. All the respondents expressed their views about vacancy notices as follows.

In the process of employment of persons with disabilities, discrimination starts from the scene of vacancy announcement. The media that announce vacancies, the places where vacancies posted are not accessible since the Medias do not use sign languages for those unable to hear and the poles and announcement boards that the vacancies posted on are inconvenient for persons with disabilities particularly for those who use wheel chairs and crutches. The visually impaired persons do not have equal access to read those announcements posted on vacancy boards due to the fact that the vacancies are displayed in ink print. As a result, they are obliged to look for some voluntary readers that could barely be found. The presence of these problems confirmed by the in-depth interview respondents, focus group discussants and representatives of disabled persons organizations. A worker with visual impairment informed the researcher the way he came across vacancy notices charged him a lot because he paid for the newspaper peddler every day. After series of follow-up of the notice, he got the current job through competition. This was tedious since there are no other chances to follow the vacancy announcements in the city.

4.3 Problems Encountered by Persons with Disabilities during Competing for Jobs

This question is also asked to explore whether persons with disabilities face discrimination and problems of reasonable accommodations because of their disabilities when applying for a job.

In this regard, the majority of the respondents with visual, hearing and physical impairments reported to have been discriminated against during application and competition for jobs in various occasions based on their disabilities. They stated as either they had been screened out during registration or before approaching for tests or denied the opportunity to be hired after they passed the tests. One person with physical disability expressed:

“My disability is minor; in fact I use ordinary stick for physical support. Once I competed in Federal General Auditor and worked well and passed in the written test. The notice posted for the interview and I went for the same. However, when the authorities of the Agency (the recruiting committee) saw me and discovered my disability, they asked me different questions which are not related to the vacancy that I’m competing for. They refused to call me for admission. In fact I faced the same problems in different government organizations like the Ethiopian Airports Enterprise, Inland Revenue and Customs Authority and the Ethiopian Privatization Agency.”

Another respondent with visual impairment expressed that by February 2002 E.C the Civil Service Bureau of Addis Ababa announced vacancies to fill with qualified man power in different offices. Among the applicants, they were 16 persons with visual impairment. They were informed to indicate whether they have disabilities. Fifteen of them identified themselves as persons with visual impairment. The one who hid his disability was hired and those identified themselves as persons with disabilities rejected from the competition.

Another respondent with visual disability also mentioned his friend’s (what his close friend encountered during competition) experience in an interview test. “It was in an organization (he did not want to mention the name of the organization). In the interview test, he was asked how he could escape if gun is fired on him. He replied that if it happened, I would try to run and escape. He did not know why they asked him this question. They might have reason. But in his opinion, they wanted him to be out of the competition.

Another man with visual impairment responded to the researcher saying, “I tried in a number of places to be employed. Some did not call me at all for tests. Some used to tell me I could not

work on the job since the jobs require fieldwork and computer skill after I had been told won in the competitions.”

In addition, the participants of the FGD revealed that they know many cases where persons are denied employment opportunity because of their disability. They also discussed their own experiences which they encountered when looking for jobs. One of the discussants expressed that he was refused to get hired in a governmental organization because of his blindness and he added that one individual, among the recruiting committee members, told him as he couldn't work on the post because of his impairment even though the job had been related to legal counseling. Other focus group discussants also pointed out commonly that they face double discrimination in the process of competing for job and generally refused employment in government organization because of their disability and sex. One of the FGD discussants pointed out what happened on one of his friends during test taking session. His friend has gone to an organization for employment and filled out a registration form. One of the questions to be filled was whether he can read and write. On the test day he sat down and waiting for the examination. Then, the examiner put a test paper with a pen in front of him. After a while, he asked what is going on and has got a response: “we are not going to assign a reader for you. Because you are here as one of the qualified competitors who can read, write and answer the presented test.”

All participants of the FGD and the interview respondents believe there is a serious and deep-rooted problem in obtaining job for PWDs. According to them, persons without disabilities are able to find some kind of job in accordance with their level of education or type of training. Those persons without disabilities whether they completed elementary, secondary or tertiary education, can find job which fits their educational level. But, PWDs have no option other than begging if they have not graduated from higher educational institutions. In addition, as they stressed, it is not uncommon to be discriminated against on the basis of disability even among the graduates. Besides, they pointed out that the private sectors have totally ignored the employment opportunity of PWDs.

4.4 Reasonable Accommodation and Opportunity of PWDs to Training and Promotion in Employment

Respondents in the interview sessions were asked whether their special needs including materials and equipment are fulfilled in their work place or not. Among the three visually impaired employees, all reported as they have assistant readers and writers hired by their offices. But they reported, as there had been hard times of work before these assistant readers and writers were hired for them. As one of the in-depth interview respondents told to this researcher, deaf employees are not provided with reasonable accommodation devices such as amplified telephone, visual alarms, and assistive listening systems, software such as Gallaudet font, visible accommodations to communicate audible alarms and messages and qualified sign language interpreter services at work places.

All of the blind workers cited the unavailability/scarcity of Braille materials in their work places that should be provided by their employing agencies. But one expressed that he requested for software Job Access with Speech (JAWS) and Braille machine to be purchased for him so that he could perform his work properly. However, when the organization refused to buy the equipment, he bought by his own which costs about Eth. Birr 1900. and asked for reimbursement. But the organization refused to refund the money for the worker.

One of the respondents told the researcher about the problem encountered his teacher friends concerning provision of accommodations. One of the teachers had some part of the textbook in Braille bought by the school while she was obliged to look for somebody to read for her the remaining parts of the text which charged her some amount of money. The other visually impaired teacher in a high school expressed that she had the texts in Braille copy but purchased by her own expense. Particularly, both of the teachers noted that they usually faced difficulty in finding Braille copies of texts, when textbooks are renewed or when they are assigned to teach new grade levels to which they have no prepared Braille texts. As they pointed out, when new textbooks are distributed to schools, the concerned bodies do not take in to consideration that there are blind teachers who need Braille copies. In addition, there are no Braille publications in the libraries of the schools where both of the teachers teach and also no special arrangements if they come with a reader.

In the agencies where the respondents with physical impairment work, there was no ramp to facilitate for them to go up and down stairs. However, one of them reported to work on the ground floor and thus, faced no difficulty on daily activities of his job. The other two forced to go up and down stairs using their crutches since there is no lift that existed in their organization.

The participants of the FGD also discussed on this point and informed this researcher about the unavailability of reasonable accommodation (special necessary materials and equipment) in work places for PWDs in general. Braille materials are not provided for the blind at work places partly because it is not easy to find these materials in the market and partly because of ignorance or negligence of employers. As the discussants also raised, buildings are not constructed considering persons with physical disability and as a result, any locations where they need to go to get services in general, and work sites in particular are inaccessible for them. They also pointed out that even though hiring readers for the blind is being encouraged by government, there are some employers who looked at this as extra expense or imposing undue burden for their agencies. Thus, resisted hiring disabled people particularly candidates with visual impairments.

All the visually impaired respondent stated that notices are posted on boards through ink which the blind workers could not read unless their colleagues tell them what is posted. There is no any other arrangement in any of the organizations where these respondents are working. Regarding their experience in gaining training opportunities, the majority of respondents expressed that they had not been refused the chances because of their disabilities. But as they said, the problem is that the training materials were not prepared in Braille and soft copies were not provided. Places where the trainings offered were sometimes far away from the center of the town and/or out of the town and inaccessible to persons with disabilities. The trainings might be arranged, as one participant of the FGD told for example, “to be given in Adama on the third floor of a hotel. The inconveniences of training places for a person with physical disability exclude or creates problem on them to take part in the trainings because the hotel had no elevator. The other problem he added was that there were no transportation services to take them to the training venue. He considers this as he’s denied the training opportunity.

With respect to a modified working hours, one worker with a physical disability pointed out that he was forced to stay at work place out of the working hours till the night which is very hard for him to arrive his home after completing the work. There is no transportation service to take him to his home. And sometimes the supervisors assign him at working place which is difficult for

mobility. Additionally, his working place is on third floor which is not accessible for movement (to go up and down). There is no elevator on the building.

The participants of the FGD further pointed out the difficulty for the visually impaired employees to be promoted to higher government posts because it is believed that they could not keep high government secrets since they need someone to read messages they receive. Thus, higher posts, where signing on bank checks is common, are not given to the visually impaired workers. Moreover, as they clarified, the refutation of necessary materials (reasonable accommodation), lack of training opportunities due to various reasons and inaccessibility of work sites might affect the efficiency of PWDs, which is the basis for promotion.

All of the interviewees responded to have good relationships with their co-workers. The majority of them also believed that their supervisors were satisfied by their performance. However, three of them replied as they did not know about feelings of their supervisors about their performance. And one of them believes that his supervisor was not satisfied with his performance because he always requests for a proper accommodation at work place which the supervisor relates his right request with work performance

In conclusion, all the respondents (the in-depth interview, FGD and Key informant interview participants) pointed out the challenges encountered by persons with disabilities at work places concerning reasonable accommodation as follow:.

- In work places an employee with visual impairment is not equipped with adaptive technologies such as soft-wares and keyboards, braille materials, digital recorder, qualified assistant reader and writer,
- Deaf employees are not provided with reasonable accommodation devices such as amplified telephone, visual alarms, and assistive listening systems, software such as Gallaudet font, visible accommodations to communicate audible alarms and messages and qualified sign language interpreter services at work places,
- Work place buildings are not accessible to persons with physical disabilities due to lack of lifts, ramps, hand rails and standardized steps.
- Focus group discussants confirmed lack of specialized toilet as the serious problem to persons with disabilities. All workers who use crutches, wheelchairs and artificial leg

have faced difficulty to use toilets of their offices due to the fact that the toilets are not built in a manner to be used by these persons.

4.5 Measures Taken by the Persons with Disabilities when Facing Discrimination in Employment and During Refutation of Reasonable Accommodation

All the respondents reported faced discrimination when searching for jobs. Three of the in-depth informant have stated to be discriminated against training in their employment and two others have expressed they were denied promotion because of their disability. But only two of them took measures during these occasions. Some of these measures were reporting to the top officials of the employing organizations and to the concerned organization. But five of them didn't know that the law gave them the right to institute a suit to a competent court if they are discriminated based on the ground of their disability existed with respect to recruitment, promotion, placement, transfer or other conditions of employment. One respondent with a physical disability expressed to this researcher that he had applied to the governing board of the organization, but when he couldn't succeed to get solution he appealed to the institution of ombudsman, and finally, he was successful in gaining the promotion to which he had competed. Another interviewee with visual impairment expressed that taking cases to court is a futile exercise because the employers are not ready to understand our requests; in contrary they would inflict revenge upon us. If we take such steps, in the future we can't be employed even in other institutions since the previous one and the current exchange information about us. Even though we know the law, it is not still sufficiently enforced to protect the rights of PWDs and we have fear to defend ourselves.

Some respondents who know about the law said that the law is issued to protect the employment right of PWDs but it is not implemented adequately. What we see in practice has difference from what is stipulated on the law. They further indicated that the law did not go beyond the paper.

4.6 Sources of Discrimination and Refutation of Reasonable Accommodation on Workers with Disabilities in Employment

Various reasons were given by respondents to be causes of discrimination against them and other PWDs. They were asked to reflect on their beliefs about the possible sources of discrimination and refutation of reasonable accommodation made against them and other PWDs in employment.

Unavailability of clear and well detailed legislative measures that penalize employers who fail to hire PWDs and to fulfill reasonable accommodation (their special needs, materials and equipment) in work places is the major cause for the deprivation of rights of PWDs to equal opportunity in employment. In addition, some employers do not know even the available laws regarding the rights of PWDs to equal employment opportunity. The other response acquired from respondents of the interview was let alone the employers the organs that the power vested on to oversee the implementation of the proclamation do not know the entire content of the law. Some employers consider the fulfillment of the special needs, materials and equipment as imposing additional burden on and expense for their organization, and as a result, prefer not to hire applicants with disabilities. As respondents further added, employers assume that PWDs cannot perform fieldwork, or if they believe that they could do so, some consider sending PWDs to fieldwork as unfair act. Besides, particularly persons with physical disabilities, as the representative of ENAPH on the informant interview noted, “persons with disabilities are deprived of equal employment opportunity simply due to negative attitudes and stereotypes on persons with disabilities they developed.” Some interviewees also raised employers’ tendency to make generalizations about efficiency of PWDs based on their previous experience with a certain individual with certain type of disability. If they had hired a disabled person who was inefficient in his performance due to his very personal capacity or behavior, employers usually make stereotypes as if this is the typical characteristic of the disabled as a whole. They often fail to recognize that PWDs are individuals having differences among them in capacities, potentials and behavior as any human beings. Thus, this also serves as a good cause for employers to make discrimination between workers based on disability.

The deprivation of reasonable accommodation of PWDs in the work place has adverse effects on their efficiency at work and this again affects their promotion and advancement in employment. Some supervisors of PWDs also hesitate, as some respondents explained, to give tasks for them, which they believe PWDs could not perform and this also affects their efficiency and advancement in employment. The majority of respondents also believed as PWDs themselves contributed to the denial of equal employment opportunity for PWDs. As they stressed, PWDs often prefer silence when their rights to employment in general and reasonable accommodations in particular are denied. They do not appeal to the concerned bodies in their organizations or to courts or elsewhere. They further noted that some PWDs do not carry out their duty well in

employment and sometimes they inappropriately tend to associate their inefficiency with their disability. Thus, employers misunderstand about the abilities and potentials of PWDs and make generalization that all PWDs could not perform their jobs efficiently.

According to respondents and participants of the FGD, Associations of PWDs also have not shown much effort to advocate for the rights of PWDs to employment in general and to reasonable accommodation in particular. As especially the participants of the FGD explained, this is partly because these associations have their own internal problems and partly, they have scarcity of capable and committed human resources. But the representative of ENAD and ENAPH reminded the role they played in the formulation and promulgation of Proc. No. 568/2008. They stated that they actively participated in its formulation and took part in the lobbies the proclamation to come into being. But since the proclamation has no regulation from the Council of Ministers and directive from the Ministry of Civil Service and appropriate regional organs, the provisions of the proclamation have gone to be remained only on paper according to the response of the key informants. The associations of PWDs have not made coordinated and consistent effort for the formulation of the regulation.

However, as both groups (participants of the FGD and the in-depth interviewees) frequently noted, the major cause of the denial of equal employment opportunity and deprivation of necessary accommodations for PWDs is lack of awareness and ignorance of the public in general and employers in particular about the potentials and abilities and the right that provided by the law to PWDs. According to the respondents, PWDs are looked as unproductive, unable to learn and work, dependent, etc. In addition, participants of the interview further explained that it is only lack of awareness or ignorance about the abilities of the PWDs that cause them unequal employment opportunity, but there is also lack of good faith from employer's side towards persons with disabilities. As one of them said, "Persons who worked and learned with the disabled and those who know more about them are the ones who mainly deprive their right to employment and deny reasonable accommodation provided by the law. This is not lack of awareness, but it is deep rooted attitudinal problems and not having good faith, which cannot be overcome and solved easily through awareness raising campaigns and workshops and programs and so on. This needs its own further research to understand why these people deprive the right of PWDs to employment and deny accommodations provided by the law." Thus, lack of

awareness and attitudinal problems, coupled with other factors are the major causes for the prevailing unequal employment opportunity for PWDs.

Other respondents revealed that there is a problem from the government body which has negative attitude on persons with disabilities in provision of necessary accommodations for persons with disabilities. This was manifested by the response obtained from one of the key informants by explanation he gave saying that fulfilling all the request of PWDs demand budget and the country's resource to be invested on persons with disabilities. This shows that there is a problem on the assignment of proper man power at top authority level which cannot feel accountable for the power vested on them.

The others also raised the issue of lack of independent structures which follow the implementation of laws enacted, increase participation of persons with disabilities in activities of development and protect the rights of persons with disabilities in every civil service institutions. For that matter, there was an enacted law in 2010 which is Proclamation No. 691/2010, Definitions of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia which recognizes equal opportunities and full participation of persons with disabilities in every sector. Though this proclamation is enacted three years back, still not much effort has been carried out in implementing this law by many institutions. Thus, the respondents of the interview cited this issue as one of the enforcement gaps of rights of persons with disabilities in general and provision of reasonable accommodation in particular.

4.7 Effects of Discrimination in Employment and Deprivation of Reasonable Accommodation at Work Place on Persons with Disabilities

As the discrimination against persons with disabilities has a variety of reasons, it has also pervasive adverse effects on the psychological, social and economic well-being of them.

Psychologically, they might develop low self-esteem, hopelessness, lack of trust on others and look other members of the society who are non-disabled suspiciously. One respondent with visual impairment stated,

“I was graduated from a university. But I could not find job for two years. At that time, I was very much depressed; I started to think that what is the value of my education unless

I obtain job through it? I started to isolate myself from people not to be asked whether I found a job or not.”

The experience of most respondents tends to show that being unemployed or discriminated also affects inter-personal relations. As a result, one's social participation is affected by the discrimination made against them. They might develop negative attitudes towards the society in response to the discrimination made against them. Respondents also pointed out loss of social status to be the other negative impact of discrimination. They further noted families would consequently be suspicious about potentials and abilities of the disabled because they do not see their disabled members participate in the work life.

PWDs become dependent on others for their existence when they are denied equal employment opportunity. At times of unemployment, they relied on their families and other relatives for their very survival. PWDs also develop a sense of despair that their final destiny is being a low level worker and do not make much effort to advance further in their employment. In addition, those workers with visual impairment that deprived necessary materials/essential tools also were obliged to purchase Braille materials, software such as JAWS for their screen reading by their own expense which has own negative impact in their economic situation.

One interviewee with visual disability expressed that “the discrimination by itself is a great problem to us and has a variety of adverse effects on life. If we do not protest the discrimination made against us, it will persist throughout our life and degenerate us. If we act in some way for the respect of our rights or ask our bosses to fulfill our special needs and materials, by the way denial of necessary accommodation is a big discrimination as the law reveals.”

The FGD participants illustrated discrimination of various types which includes denial of reasonable accommodation to create a vicious circle of poverty on the life of persons with disabilities. All the in-depth interview informants and FGD expressed their views as the discrimination made against someone results in hopelessness and having low esteem; the low self-esteem also needs someone to poorly perform at his job. This again affects his opportunity to advance in employment which also affects some one's economic wellbeing.

These participants also raised that the effects of discrimination is not only on the life of the individual concerned, but it also affects his family and country. The family might develop hopelessness about its disabled member and the disabled might become dependent on his family

for his very survival. The society also loses productive manpower to whom the country has invested too much money in order to educate and enable him be self-reliant.

To sum-up, the respondent persons with disabilities expressed that they had faced discriminations when competing for jobs. They were either screened out before tests, or asked irrelevant questions that were not related to the jobs during interviews or disqualified after they won competitions. In the work places, they were not provided with the necessary materials and equipment that help them perform their duties effectively. Getting training and promotion had been difficult, if not impossible, for some respondents. Among other things, attitudinal problem and lack of awareness regarding the abilities and potentials of PWDs have been the major sources of the discrimination. Because of the discrimination, they developed feeling of hopelessness, inferiority, suspicion on others and also became dependent on their families or relatives for their survival in times of unemployment or to get support to perform their work well that should have been provided for them in their work place. Their interpersonal relation was also affected because of the discrimination made against them.

Among the institutions that concerns about disability in Ethiopia is the house of Peoples' Representatives (HPR) mandated with the power of drafting legislations and ratifications of international treaties and agreements. In line with this power, the HPR issued a very few legislations wholly dedicated to disability. Of course, the provisions regarding to disability are enshrined and scattered under different federal laws. A very important enacted legislation concerning with regard to the right of disability is "Employment proclamation on the rights of Persons with disabilities Proclamation No. 568/2008". Besides, as HPR is a legislative body of the country, it has ratified UNCRPD in order to fill the gap with the protection of rights of PWDs.

Having reckoned of this fact, the researcher has made interviews with the HPR Social Standing Committee and Legal Standing Committee. Both members of the standing committees being part of the interviewees responded the process of enforceability of the existing legislations including constitution. To ensure the enforceability of these legislations, the standing committees create awareness programs to members of HPR as well as members of House of Federation (HOF) in addition to officials designated at ministerial level. But, the major challenge that face the government in enforcing laws regarding disability, the ministers or officials who get awareness

through training are replaced by another appointees for different reason. Thus, the turn over gap could be mentioned as one challenge in enforcing the laws. Because, training the new appointees may require time, resource and mental readiness to acquaint them with the protection mechanisms of PWDs.

As obtained from these interviewees, understanding the crosscutting issue of disability, the HPR has tried to insert the provision that could protect well in proclamation No. 691/2010 under the section that provides the common powers of ministries. The provision contained under this section implies the cross-sectoral nature of disability and all federal sectors are required to cater the needs of PWDs in their respective working environment. By virtue of this fact, the legislative organ under its respective aforementioned committees has established a monitoring mechanism that receives complaints from disabilities to ensure the protection of the rights of PWDs in Ethiopia though yet to be appreciated.

In addition to the legislative body, another institution concerning regarding to the protection of the rights of PWDs is the judiciary. Also the researcher has made an interview with the judges working in the Appellate Court of A.A. Accordingly; the judges responded that they are interpreting the existing laws to ensure the rights of PWDs. The major challenge judges face in interpreting the laws are the non-existing of implementing regulations and directives. However, the court bases its decisions on proclamations. For instance the proclamation on employment rights of PWDs has not implementing regulation or directive concerning civil servants. This in turn could be mentioned as a gap in the enforceability of the laws in the judiciary.

CHAPTER FIVE

5. DISCUSSION OF THE FINDINGS

Based on the findings, the area where the majority of the respondents faced discrimination and denial of reasonable accommodation is when they compete for jobs. They either were screened out before tests, or encountered distinction or preference during tests or denied employment after they win competitions or may they deny necessary accommodations help them to take tests for the competition. Taking the above situations in to account, we can discuss the findings dividing into three thematic areas: such as discrimination against PWDs during recruitment for employment and promotion, provision of reasonable accommodation and the effects of discrimination and denial of reasonable accommodation on the socio-economic life of PWDs.

5.1 Discrimination against PWDs during Recruitment for Employment and Promotion

A variety of reasons were mentioned by interviewees and participants of the in-depth interview, key informant interview and the FGD for the discrimination made against PWDs during recruitment for employment and promotion.

It is undeniable fact that as our findings indicates, obtaining jobs in the private sector and non-governmental organizations are difficult, if not impossible, for those who have tried to get there. As we understood from respondent workers with disabilities the provision of reasonable accommodation during recruitment and tests is extremely challenging in the above mentioned sectors compared to the government sector because PWDs have better opportunity for employment in the government institutions.

Though the government attempted to give due regard on the employment rights of persons with disabilities it is likely true that discrimination and absence of reasonable accommodation is visible within the governmental institutions themselves. In relation to this fact what sorrowful and strange is most respondents have unexpectedly experienced discrimination in those governmental organizations vested power on them for the protection and promotion of the rights of all citizens including PWDs. Especially in those governmental institutions that specifically responsible to work on disability matters are not in a proper position to discharge their functions in promoting awareness on protection of PWDs from discrimination during recruitment and promotion. These findings are consistent with the researches of some scholars such as Tirusew who proved that PWDs encountered serious challenges in obtaining jobs even though they were

equipped with the necessary skills through training and education.²⁵⁹ According to his findings, employing agencies disqualify candidates with disabilities regardless of eligibility for the job. He further added the point that “the employers always raise issues which are irrelevant for the job at the time of interview.”²⁶⁰ Researches elsewhere reiterate the presence of implicit or explicit discrimination made against PWDs.²⁶¹

To substantiate the views of the respondents, as this researcher himself is a PWD of physically impaired, faced discrimination when he was working in one of the regional states Ethics and Anti-Corruption Commission. Some years ago, the Commission posted an internal promotion announcement for all competent professionals to fill the vacant space. Then he competed alongside the other competitors and won the given written and interview tests. The committee confirmed and conveyed it to the Commissioner for approval. But, consequently the Commissioner rejected what the committee had confirmed and presented for approval for the mere reason the winner of the exam for the vacancy was a person with a disability. What is more embarrassing was the commissioner orally warned the committee members for confirming the PWD winner to the promotion.

Abraham and Woldesenbet confirmed that “obviously, it is difficult for persons with disabilities to get employment in the open labor market. Yet, even they acquire job, it is difficult for them to advance in their jobs.”²⁶² Based on the findings of this research, some respondents expressed that they had encountered discrimination based on their disability for promotion in their employment. Some of the participants in the FGD expressed that discrimination was more serious for PWDs to be promoted in their employment than to obtain job. They explained that if an individual is denied employment in one agency, they could be hired in another agency. In contrast, if discrimination persists against promoting in employment in an agency they may be forced to an undesirable step mainly to court litigation process which exposes them to financial, moral and social loss. The others argued on the contrary and noted discrimination as more serious in getting job than to be promoted. This is because a disabled person could have the chance here to show their abilities and potentials and be able to upgrade in various positions.

²⁵⁹ Tirusew Tefera, *Disability in Ethiopia: Issues, Insights and Implications*. Addis Ababa, Addis Ababa University, 2005, pp. 176-177.

²⁶⁰ Ibid.

²⁶¹ Supra note at 9.

²⁶² Supra note at 176, p.35.

Neufeldt and Albright stated that “anyone with an elementary education was at a disadvantage when seeking employment as compared to university degree holders. However, disabled people were at much greater disadvantage even with a university degree, there continuous to a large discrepancy in employment rates between disabled and non-disabled persons. The differences in economic participation between disabled and others are so universal and so systematic, and one is forced to conclude that discrimination is a cause.”²⁶³ Here discrimination is manifested in denying access to vacancy announcements, prohibiting form registration, raising unrelated issues on oral interviews and depriving reasonable accommodations during examinations and on work careers.

The other implementation gap of the proclamation is the absence of the responsible organ that oversees the applicability of the law. As to the respondents of this research, there should be independent structure in every civil service institutions just like women affairs that instituted in all civil service organizations to enforce the laws, to follow-up the implementation of the provisions and to protect the rights of persons with disabilities. In this respect, proclamation 691/2010, Definitions of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, Article 10/5 states that each Ministry shall have to ‘create, with in its powers, conditions whereby persons with disabilities could benefit from equal opportunities and full participation’²⁶⁴ should be implemented accordingly and the issue of persons with disabilities should be mainstreamed in every activities of civil service institutions.

With regard to the directives, an interviewee who works at the Ministry of Civil Service as a Director of Civil Service Support and Counseling Directorate stated that there is no any specific law till now in order to effect the specified provisions under proclamation 568/2008. However, the Ministry has organized a drafting committee to issue a directive that could help every civil service institutions to guide them how to conduct the provisions of the proclamation. The draft directive tries to include specific provisions about the employment rights of PWDs but has not yet come into reality. So, it could be a reason for the inefficient applicability of the law under different civil service institutions. In addition to the Ministry of Civil Service, the institution concerned with the issues of disability is the Ministry of Labour and Social Affairs. As the coordinator, Awareness, Education and Advocacy Team in this Ministry expressed in the

²⁶³ Supra note at 9.

²⁶⁴ Supra note at 176.

interview that the awareness level of the community at large and the employers in particular is very minimal. The responsible organs to conduct awareness raising are the Ministry of Labour and Social Affairs and the respective Regional Labour and Social Affairs Bureaus. The Ministry has attempted to create awareness at different regions to prevent discrimination during recruitment and promotion as well as enable the enforcement of laws related to employment rights of persons with disabilities. But the awareness creation programs have not been carried out in the community level in order to protect the rights of persons with disabilities in general and to enforce the law at large. This was due to capacity constraints, such as financial problems and shortage of capable manpower in the Ministry.

5.2 Provision of Reasonable Accommodation

A professional is hired in any organization because his skills are needed by that specific organization for the specified tasks. Here, it is only his skill that a professional with/without disabilities takes with him to the work place when he joins an organization. Even if persons with disabilities become successful in gaining employment, reasonable accommodations (their necessary materials and equipment) are not fulfilled at the work places. Ordinary materials and facilities are provided for employees by employers. An organization that provides tools and equipment for its workers without disabilities must do the same for its workers with disabilities taking into account some exceptions of employment accommodations. If not, it would be considered as discrimination. To that end the majority of respondents have expressed their views the presence of discrimination attached to employment accommodations. Thus, due to these facts the respondents with disabilities are forced to fulfill some employment accommodations from their personal expenses which should have been provided by their employers. This was expressed by Neufeldt and Albright as “take to be discrimination by failing to take reasonable steps to remove barriers in the work environment that prevent disabled people participating equally.”²⁶⁵ Not only in their jobs, but in trainings prepared for employees, efforts are not made to include and address the needs of PWDs responded to this research, where their equal participation is neglected. These issues have repercussions on the overall efficiency and promotion of persons with disabilities in employment. The female participants on their part

²⁶⁵ Ibid.

expressed that they faced double discrimination in searching the job, in competing for promotion, in provision of necessary accommodations based on their disability and sex.

As the information found from most of the respondents the more serious challenges faced PWDs are acquiring reasonable accommodations while searching for jobs, seating on exams, thereafter. The respondents revealed that the discrimination of reasonable accommodations starts from the scene of vacancy announcement since it might be posted at inconvenient places. Similarly, the challenges occur during registration and examination. For instance after the recruitment step during examination no reasonable accommodations is taken into consideration such as assigning readers and writers for the visually impaired and inconvenient examination rooms for persons with physical impairments.

The government gave special attention on the employment rights through enacting domestic laws and ratifying the United Nations Convention on the Rights of Persons with Disabilities to avoid discrimination. Among the domestic laws, Proclamation No. 568/2008 the Employment Rights of Persons with Disabilities is the only one wholly focuses on the rights and interests of persons with disabilities in employment cases by protecting PWDs from discrimination and imposing employers to provide reasonable accommodations. Article 6 of this Proclamation explicitly states that reasonable accommodation for women with disabilities (WWDs) to be affirmed, by taking in to consideration their multiple burdens that will arise from their sex and disability.²⁶⁶ This provision gives special protection for WWDs. But as women respondents asserted in considering this provision, the women did not get any special benefit or protection as a result of lack of inadequate implementation of the existing law. Particularly due to discrimination and denial of reasonable accommodation, the problem is highly visible on those who have hearing impairment. This shows that they are deprived of information that is important to them in their work place. This is also confirmed by participants of the informant interview. The interviewee from the Ministry of Civil Service stressed that in most of the institutions hiring assistance is not known or practiced mostly for those physically disabled and hearing impairment. However, though it is not sufficient, we can see in practice that institutions hire for those visually impaired workers. Then the interviewee from the mentioned institution confirmed that the Ministry has not strictly followed up the implementation of the provisions of the law. When we see those who have

²⁶⁶Supra note at 8, article 6/b.

hearing impairment they don't have any assistance but when the law states to assign assistance it is meant to be applied for all where the reasonable accommodation is found necessary.

Respondents of the interview with physically impaired persons confirmed that they suffer from inaccessibility in their work places. Because due to the lack of lifts on their building they are forced to walk up to six stairs using crutches. This has a tremendous impact on their jobs. Hence they struggle with a number of barriers related to accessibility as challenge at their work places. With regard to building conditions, proclamation No. 624/2009 requires all new building construction over four floors to have elevators, in addition to this, accessible toilets also indicated for persons with disabilities.²⁶⁷ Although proclamation 568/2008 includes provision about accessibility, PWDs still suffer severely from lack of accessibility at their work place. Here most of old buildings do not have ramps, hand rails or any other support systems are inaccessible but there must be a means to access the buildings.

Metasebia as cited in Abraham and Wolde Senbet "inaccessibility of work places particularly for the severely disabled, failure of employers to understand what disability may/may not involve, the long lasted charity model approach in provision of services for PWDs, unwillingness of employers to hire disabled workers, ignorance of employers about abilities and potentials of the disabled, to be factors affecting equal employment opportunity for PWDs."²⁶⁸ However, the root cause for the unwillingness or ignorance of employers to provide necessary accommodations, facilitating accessible work site for the disabled, etc. are lack of awareness and attitudinal problems of the public in general and the concerned parties (professionals or experts) in particular who are involved in decision making on various issues that might affect the employment and other opportunities of PWDs. Tirusew states that "the negative attitudes for the causes and consequences of disability adversely affect the available provision of services and the nature of policies. This affects the psychological, social, developmental aspects of the life of PWDs and their overall performance and role in the society."²⁶⁹ Employers either do not have the needed awareness about the rights, abilities and potentials of PWDs or if they know about their rights and abilities, have no good faith to employ them.

²⁶⁷ Supra note at 168.

²⁶⁸ Supra note at 176.

²⁶⁹ Supra note at 14, p. 8.

As it is stated by some respondents, the non-applicability of the laws is caused due to lack of detail provisions as entailed by proclamation 568/2008. The proclamation mandated the Council of Ministers to issue regulations necessary for the proper implementation of the proclamation.²⁷⁰ Similarly, it gave responsibility to Ministry of Labour and Social Affairs, Ministry of Civil Service and the appropriate regional organs to issue directives necessary for the proper implementation of the proclamation.²⁷¹ Except the Ministry of Labour and Social Affairs, the others did not issue the regulations and directives for the implementation of the proclamation. This condition contributed for the non-applicability of the proclamation and its provisions.

The fulfillment of reasonable accommodations at work place is a mandatory has clearly recognized by the law. But its applicability is not sufficient. This is due to lack of necessary resources, awareness, misperceptions and distorted assumptions towards the needs and abilities of persons with disabilities by both the public institutions and private sectors. These are the main gaps of implementation of protection of rights of persons with disabilities in provision of reasonable accommodations.

5.3 Effects of Discrimination and Denial of Reasonable Accommodation on the Socio-Economic Life of PWDs

Absence of clear and well detailed legislation concerning the right of PWDs to employment especially to reasonable accommodation, ignorance of employers about the available laws, the inefficiency of some PWDs in their performance which is resulted in hasty generalization made by employers to consider as if all disabled persons are unable and unfit to work, less attention and effort made by PWDs and their associations to stand for the respect of their right to employment, employers' fear of additional expenses and considering employing persons with disabilities as burden, etc. were some of the reasons cited by informants of this study.

When the disabled are denied opportunities including provision of reasonable accommodations, they become handicapped. When a disability becomes a real handicap to employment, it makes problems on the individual concerned, his family and the society at large. ILO listed some of the

²⁷⁰ Supra note at 8, Article 9/1.

²⁷¹ Id, Article 9/2

problems that are created when disability becomes a real handicap in employment. For the individual concerned, a handicap results in loss of earning power, loss of skill and experience, loss of status and dependency. For the family, it brings about loss or reduction of income, loss of status, increased dependency on others, burden of caring for the disabled member, etc. For the society as a whole, it also brings about loss of disabled workers' former contribution in skill and earnings, loss of manpower unit, assumption of financial charges for care of the disabled and his family, or increased number of nonproductive or dependent persons.²⁷² In this situation, therefore, disability is not only the matter of an individual, but it is also the concern and a matter, which affects a significant number of populations in a country.

The discrimination of various types which includes denial of reasonable accommodation have a possibility to create a vicious circle of poverty on the life of persons with disabilities. All the in-depth interview informants and FGD expressed their views as the discrimination made against someone results in hopelessness and having low esteem; the low self-esteem also needs someone to poorly perform at his job. This again affects his opportunity to advance in employment which also affects some one's economic wellbeing.

²⁷²International Labor Organization, Basic Principles of Vocational Rehabilitation of the Disabled, Third Revised Edition, Geneva: International Labor Office, 1985, pp. 6-7.

CHAPTER SIX

6. CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

Persons with disabilities face discrimination throughout various aspects and stages of employment. One of the manifestations of discrimination is denial of reasonable accommodation in work places. Accordingly, while conducting this research, as the majority of the respondents pointed out, they encountered discrimination during application and competitions for jobs because they are denied registration for vacancies and taking tests and deprived of necessary accommodations during tests. Some had been discriminated against obtaining training and promotion opportunities in their employment. Their job accommodation is at the very minimal level whereby their needs are not adequately considered and addressed in their workplaces. Hence, the following are major challenges facing each PWDs specifically relating to their disabilities at work place as discussed in this research.

- In work places an employee with visual impairment is not equipped with adaptive technologies such as soft-wares and keyboards, braille materials, digital recorder, qualified assistant reader and writer,
- Deaf employees are not provided with reasonable accommodation devices such as amplified telephone, visual alarms, and assistive listening systems, software such as Gallaudet font, visible accommodations to communicate audible alarms and messages and qualified sign language interpreter services at work places,
- Work place buildings are not accessible to persons with physical disabilities due to lack of lifts, ramps, hand rails and standardized steps. There are also no standardized toilets at work places.

The causes for the discrimination made against the PWDs vary. However, lack of awareness and attitudinal problems of the general public and employers are the root causes even for other factors, which affect the employment opportunity and work conditions of persons with disabilities. There is no adequate enforcement of existing legislation in the country, which has been issued to protect the rights of PWDs to reasonable accommodation in particular. The available law issued with respect to the employment rights of PWDs, Proclamation No.

568/2008, the Right to Employment of Persons with Disability, though authorizes the Council of Ministers to issue regulations necessary for the proper implementation of the proclamation, still no regulation has been issued to implement the proclamation. This proclamation also authorizes the Ministry of Labor and Social Affairs and the Ministry of Civil Service and the appropriate regional organs in their respective jurisdiction to issue directives. The Ministry of Labor and Social Affairs has issued a directive specifically protecting the rights of persons with disabilities employed in enterprises and profitable organizations. But the Ministry of Civil Service and its respective regional and City Government organs haven't issued a directive as authorized by the proclamation. It is possible to say that due to this fact, the existing employee accommodations are not accessible to individuals with disabilities. There are no modified work hours for persons with disabilities.

Hence, employers consider providing reasonable accommodations and adjusting the work environment for persons with disabilities as extra burden for their agency. Employers do not know what persons with disabilities could and could not perform. They make generalizations about the whole population of person with disability based on their bad experience with an individual with a certain type of disability. Thus, they become unwilling to hire PWDs in their organizations.

This discrimination and denial of reasonable accommodation has a number of negative impacts on psychological, social and economic well-being of the individual concerned in particular and their family and the society in general. They become suspicious; consider themselves as inferior to others, develop hopelessness, low self-esteem, etc. As a result, their interpersonal relationship and work efficiency is affected which also have repercussions on their further advancement in employment and participation in the lives of the society. They become dependent on their families for their survival. Hence, the family becomes obliged to care for its disabled member. Moreover, both the families and the country lose their productive members of the society.

The major gaps identified for the implementation of the rights of persons with disabilities to employment in general and the right to reasonable accommodation are: awareness and attitudinal problems of the general public, public sector, private and non-governmental organizations and person with disabilities themselves; lack of regulations and directives to enforce the employment rights of PWDs; lack of coordinated monitoring and follow-up on the implementation of the law from the legislative organ and the judiciary; lack of independent structure in every civil

service institutions that ensure the mainstreaming of disability issues in every activities; inefficient capacity of DPOs that limited advocacy matters at every forum and absence of data and research in field of employment and reasonable accommodations. Based on the findings of this research, the researcher forwarded possible recommendations that would improve the accommodation challenges facing PWDs in work places.

6.2 Recommendations

Based on the findings obtained from the in-depth interview, the FGD, the informant interview respondents as well as analyzing different literatures, the following possible recommendations are forwarded with a view to improving the problems related to employment of PWDs in general by giving more emphasis to reasonable accommodation in particular.

The findings of the study shows that measures at various levels should be taken to reduce or eliminate discrimination and deprivation of reasonable accommodations made against PWDs. The respondents of the research elicit certain proposals to end discrimination and denial of necessary accommodations at work places. This research used important sources that victimized due to discrimination and denial of reasonable accommodations at work places and various literatures such as international, regional and national instruments as well as views of certain scholars, etc. for its different recommendations. Hence, major recommendations are proposed as follows:

6.2.1 Awareness Creation Programs

One of the problems identified as implementation gaps of the enforcement of employment rights of persons with disabilities and discrimination in the process of employment in general and denial of reasonable accommodations are lack of awareness and attitudes against persons with disabilities. To slice the problems encountered PWDs awareness creation programs should be extended to the concerned organs such as the community, governmental organizations at different levels, non-governmental organizations, the private sectors, disabled persons organizations and persons with disabilities themselves.

Various forms of awareness raising programs should be extended through utilizing different methods such as; mass media, workshops, consultation meetings, trainings, etc. Both electronic

and printing media are appropriate instruments since they can address a large number of people. Associations of PWDs can also prepare their publications and utilize them to raise awareness of the public and employers about the rights, needs, abilities and potentials of PWDs. Workshops and high level conferences can be organized and mobilized by concerned bodies to those who need the programs. In all forms of the programs, the target populations that need to be addressed include: governmental officials of various sectors at different levels, government institutions, non-government and private sectors, job seekers and other citizens with disabilities and the general public at large. All of the programs should aim at raising the awareness of and sensitizing the target population about the rights, needs, abilities and potentials of PWDs. These programs should be largely based on elimination of discriminations and denial of reasonable accommodations at work places.

Government officials of various sectors such as Ministries, Commissions, Agencies, the legislative bodies of the Federal Government and the city government officials and sector organizations, the judiciary from the Federal to city government require being aware of the rights, abilities and potentials of PWDs. These entities have the influential power on the formulation and/or enforcement and implementation of legislation and policies. This is more significant because the issue of PWDs need to be mainstreamed in to the available general policies, and particular employment policies. Thus, this program is important to make public officials aware of the need of mainstreaming the concerns of PWDs in their policies and enforce and implement them accordingly.

Awareness-raising for potential employers is vital in that it enables employers to understand about the abilities and rights of PWDs and enables them to improve work conditions for PWDs and respect the equal right of persons with disabilities to employment. PWDs are the major target population on these programs so it is important to be aware of their rights, available legislative provisions about the rights of PWDs to employment in general and provision of reasonable accommodations in particular. These programs can also be said to be empowering PWDs since they are made equipped with the necessary knowledge how, when and where to appeal when their rights are violated. Thus, they themselves will become the prior advocates of their rights. Besides, since the root cause of the discrimination made against PWDs is traced to the lack of awareness and attitudinal problems of the public, awareness-raising programs are really important for the society as a whole.

6.2.2 Policy and Legislative Measures

The other finding identified as implementation gap of employment rights of PWDs is policy problems and inefficient applicability of the law due to delay of the issuance of regulations and implementation directives by the concerned organs.

Developmental Social Welfare Policy which was issued in 1996 by the Ministry of Labour and Social Affairs played great role in addressing the social problems of groups considered to be vulnerable, of which persons with disabilities are one among others. But due to the change of existing disability models to rights based approach it is necessitated the revision of the policy to be in line with the spirit of CRPD which Ethiopia is a party too. This revision should include the rights of persons with disabilities and employment rights in general and provision of reasonable accommodations in particular. Proclamation No. 568/2008 the Rights to Employment of Persons with Disabilities was enacted about six years ago. However, it has not fully come into enforcement because of the unavailability of regulations and directives for its implementation. Thus, the regulations and directives consisting of detailed provisions about the rights of PWDs to employment in general and the right to reasonable accommodation in particular should be issued and come in to force to realize the rights of PWDs as well as to be used by the judiciary for the interpretation purposes while considering disability related court cases.

Yet to curb deprivation of the rights of PWDs to employment, reasonable accommodation and other fields on sustainable basis, a disability act, as made in some other countries such as the American Disability Act (ADA), United Kingdom Disability Discrimination Act (DDA) and the Ugandan Persons with Disability Act (UPDA), which could be referred when policies and legislation are formulated, should be enacted by the legislative organ. Then, when general policies and laws are formulated in the country, by referring to this act, it will be possible to mainstream the concerns and issues of persons with disabilities. Mainstreaming issues of disabilities only requires adopting an open and inclusive system which accommodates differences and appreciates diversities and incorporates PWDs in the already available policies, institutions or agencies.

In the process of formulating policies and laws, employers, Chamber of Commerce at the city and national levels, the labor unions, organizations of/for PWDs should take part so as to ease the implementation of these instruments. If employers and other concerned bodies participate in

the formulation of a policy, it will be helpful in bringing it in to practice. Employers, the government and other concerned bodies may also then cooperate to ensure equitable recruitment and promotion policies, provide reasonable accommodation of PWDs in work places, facilitate conducive working conditions, accessible design of work places and work premises to persons with various types of disabilities, provide assistive devices and tools needed by PWDs to perform their jobs and so on.

6.2.3. Advocacy and Lobbying Initiatives

The lobbying and advocacy activities are more or less similar or can be part of that of awareness raising programs. But the researcher wants them to discuss these separately because of the purpose of giving more emphasis for the issues and partly because of that particularly, advocacy may further include handling court cases when the rights of PWDs to employment and provision of reasonable accommodations are denied, or resolving the problem through negotiation with the violators of their rights. The lobbying activity may mainly be extended to the policy and decision makers and to those who enforce them.

The advocacy requires close relationship with members who bring cases of violation of rights to employment to their respective associations. Thus, associations which undertake their advocacy and other activities need to solve their own internal problems and build their human resource capacity. Not only building their capacity, but the personnel in these associations should be highly committed to issues of disability. In addition, the endeavors they make should be coordinated and consistent.

Associations of PWDs can also assist employers who hire PWDs by providing counseling services and some kind of incentives and extending a probation employment schemes. DPOs give counseling services to employers in the areas of provisions of the law about the employment of PWDs, how employers can make any needed adjustment to the work place or jobs to accommodate the specific needs of workers with disabilities, enabling them understand different types of disabilities and associated assistive measures, etc. There should be probation period for employed PWD so that those employers who lack of knowledge or experience and hesitate to hire workers with disabilities could measure themselves about the performance capacities of PWDs. Through this practice, employers could be encouraged to know more about the talents of workers with disability for certain months. In this regard, DPOs can also assist organizations that

employ PWDs by supplying specialized tools and equipment, technical assistance, or by providing them with low price.

6.2.4. Institutional Set-Up

The enforcement and implementation of laws and policies should be given as equal attention as stipulated in policies and laws. To this end, a specific work process or department in the government organ (Ministry of Labour and Social Affairs and Ministry of Civil Service), which is authorized only for concerns of disability, has to be set up. In this concern, this government organ strives for the protection of rights of persons with disabilities and employment rights in general and the right to reasonable accommodations in workplaces in particular. Its endeavors include the follow-up, monitoring and evaluation of full implementation of the laws concerning the rights of persons with disabilities and building the capacity of the organization of persons with disabilities. The capacity building may include financial, material, training and consultation supports.

On the other side, the employer civil service institutions should establish sections for the workers with disabilities which specifically follow to mainstream the disability issues in every activity and ensures the increased participation of persons with disabilities. It is hoped that such action could practically protect the right of PWDs to reasonable accommodation. And it must be managed by PWDs themselves as they are the ones who face the challenges and can have the possibility to create a way out to struggle for their right by identifying the gaps in the laws and practices.

6.2.5. Research and Data Documentation

It is hardly possible to find the exact figure of persons with disabilities nationwide as well as in Addis Ababa city government. It is also undeniable fact that there is lack of sufficient data to identify the exact number of employed PWDs. In order to provide services and facilities to PWDs, to formulate appropriate policies and initiate laws, to include the basic interests of PWDs in national plans, programs and strategies, to tackle the adverse situations and indicate possible

solutions, the responsible organ should strive to collect, compile and document the accurate and up-to-date data of employed PWDs in government organizations, NGOs, private sectors and DPOs. As part of tackling data gaps and awareness creation, knowledge based researches should be conducted by all concerned organs mainly by educational institutions and DPOs.

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Annex One

Verbal Consent Form for Participants of the Study

Introduction

My name is Desalegn Teresa. I am a Masters Student from Center for Human Rights at AAU. I am currently collecting data regarding “Legislation Enforcement Gaps of Employment Rights of Persons with Disabilities with Particular Emphasis on Reasonable Accommodation in Addis

Ababa.” As part of my assessment, I will contact a wide cross section of people in this area. I would use the information for the fulfillment of my thesis requirement and to present information to help those concerned bodies to plan activities that will address the identified needs of persons with disabilities.

Confidentiality and consent

I may ask some personal questions that some people find difficult to answer. I am not going to talk to anyone about what you tell me. Your answers are completely confidential. Your name will not be written on this form and will ever be used in connection with any of the information you tell me. You don't have to answer any question that you don't want to answer, and you may end this interview at any time you want. However, your honest answer to these questions will help me better understand the problems of persons with disabilities in the area of employment gaps particularly concerning the provision of reasonable accommodation. I would greatly appreciate your help in responding to this study.

The interview will take 45 minutes to an hour. Would you be willing to participate?

Signature of interviewer_____

(Respondents have given certifying that informed consent verbally)

Questions for the In-depth Interview Held with Persons with Disabilities

1. Name_____ 2. Code_____
3. Sex_____ 4. Age_____ 5. Type of disability_____
6. Educational level_____ 7. Occupation_____
8. Marital status_____ 9. Family size_____

10. When were you employed in this organization? _____

11. Did you have another job before your employment in this organization? _____

12. If you had another job, why have you left it?

13. In what way have you been employed? Is it through competition or personal application?
or other means?

14. How did you hear about the vacancy of your present job?

15. Do you believe that you had encountered any kind of discrimination based on your disability
at the time of application for job and interviews and other forms of competition procedure?

16. If you had encountered, what was that?

17. If you have faced any discrimination during application or on the job, what measures have
you taken?

18. Had special measures been taken for you when you compete for the job? _____

19. If it had been taken, could you mention it?

20. What practical challenges have you experienced after being employed?

21. Do you believe that your organization has met your special needs on the job? _____

22. If so, what specific measures has the organization taken to meet your needs?

23. Have you ever got the chance of training, promotion or other opportunities in your present job? _____

24. If so, what was the chance you got and how did you get it?

25. Do you want to stay in your present job? _____

26. Why/why not? _____

27. Do you believe that the management in your organization has adequate awareness about disability and persons with disabilities? _____

28. Why/why not?

29. Does your job match with your type of qualification/training skill?

30. If not, what is the reason of the mismatch between your type of qualification and job?

31. Do you encounter any kind of mobility or communication problem in your work place?

Do you get to your office easily?

32. If so, in your opinion, what is the possible source of the problem?

33. Have you ever requested your organization to look for solutions? _____

34. What was the response? _____

35. Or, how do you cope up with them? _____

36. Do you believe that your supervisors are satisfied in your performance on the job? _____

37. Why/why not?

38. How is your relationship with co-workers?

39. Do you have information about the laws that protect the rights of persons with disabilities to employment? _____

40. If yes what are the available laws in Ethiopia, that you know, formulated to protect the rights of persons with disabilities to employment?

41. Do you believe that yours and other employers know the laws in Ethiopia formulated to protect the rights of persons with disabilities to employment? _____

42. If not, in your opinion, what measures should be taken?

43. What do you do when you encounter any grievance on the job?

44. What others should do if they encounter with discrimination related to provision of work place accommodations?

45. What type of reasonable accommodation is appropriate for you at your workplace to perform your career equally with your counterparts? _____

46. Have you ever present your case to the court when you encountered discrimination against your disability to employment? _____

47. What you encountered during your presentation of your case at the court?

48. In your opinion, what major challenges could employers encounter to provide reasonable accommodation?

6. In your opinion, what are the possible sources of the discrimination made against persons with disabilities in Ethiopia in general and in Addis Ababa in particular?
7. What psychological, social and economic problems do the employees with disabilities encounter as a result of the discrimination made against them?
8. In your opinion, does the legislative and executive bodies of Ethiopia pay due attention to protect the right of persons with disabilities to employment in general and in provision of reasonable accommodations at workplace in particular? Why/why not?
9. In your opinion, does the Ethiopian government adequately address the right of persons with disabilities to employment in its specific disability related and/or general policies?
10. What have the organizations of and for PWDs done to avoid the problem? Do you believe that they have paid adequate attention for the problem? What should they do for the future to reduce/eliminate the problem?
11. In your opinion, what major challenges could employers encounter to provide reasonable accommodation?
12. According to your opinion, if persons with disabilities encounter discrimination in employment, what steps should the government, professionals, non-governmental organizations, organizations of and for persons with disabilities, individuals with disabilities; employers and the community and others take?

Annex Three

Guiding Questions for Key Informants

**(Appropriate Organs that have the power to follow the implementation of the provisions
avail for persons with disabilities)**

1. What kind of accommodations should be provided for PWDs during job advertisement and application, job interviews and exams and post job offers?

2. Who should determine a person with disability that qualified for job accommodation that recognized legally?
3. Who is the duty holder to provide reasonable accommodation to qualified persons with disabilities at workplace?
4. What do you expect from different partners to promote reasonable accommodations at workplace?
5. What is a bottleneck in provision of reasonable accommodations to persons with disabilities?
6. What are your organizations duties and responsibilities in protecting the rights to employment of persons with disabilities?
7. What challenges have your organization encountered in implementation of proclamation (legal instruments) that protect the employment rights of persons with disabilities?
8. In your opinion, what major challenges could employers encounter to provide reasonable accommodation?
9. Do you think that adequate awareness (popularization) is created about the legal instruments (proclamations, regulations, UN convention, civil servants proclamation...)?